

CRAVATH, SWAINE & MOORE RECEIVED

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RECORDATION NO. 28 1980-9 50 AM

0-083A018

INDEPENDENT STATE COMMERCE COMMISSION

DATE MAR 28 1980

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ICC Washington, D. C.

March 25, 1980

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CABLE ADDRESSES
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CRAVATH, PARIS
CRAVATH, LONDON E. C. 2

The Atchison, Topeka and Santa Fe Railway Company 12-1/4% Conditional Sale Indebtedness Due October 1, 1995

Dear Ms. Mergenovich:

Pursuant to 49 U.S.C. § 11303 and the Commission's rules and regulations thereunder, as amended, I enclose herewith on behalf of The Atchison, Topeka and Santa Fe Railway Company for filing and recordation counterparts of the following documents:

(a) Conditional Sale Agreement dated as of March 1, 1980, between The Atchison, Topeka and Santa Fe Railway Company, and each of General Motors Corporation (Electro-Motive Division), PACCAR Inc, Difco Inc., Santa Fe Rail Equipment Co. and General Electric Company;

(b) Agreement and Assignment dated as of March 1, 1980, between Harris Trust and Savings Bank, as Agent, and each of General Motors Corporation (Electro-Motive Division), PACCAR Inc, Difco Inc., Santa Fe Rail Equipment Co. and General Electric Company;

The names and addresses of the parties to the aforementioned Agreements are as follows:

(1) Assignee-Agent:

Harris Trust and Savings Bank,
111 West Monroe Street,
Chicago, Illinois 60690.

(2) Builders-Vendors:

General Motors Corporation
(Electro-Motive Division),
La Grange, Illinois 60525.

PACCAR Inc,
1400 North 4th Street,
Renton, Washington 98055.

Difco Inc.,
Differential Avenue,
Findley, Ohio 45840.

Santa Fe Rail Equipment Co.,
109 West Ninth Street,
Topeka, Kansas 66628.

General Electric Company,
2901 East Lake Road,
Erie, Pennsylvania 16531.

(3) Railroad:

The Atchison, Topeka and Santa Fe
Railway Company,
80 East Jackson Boulevard,
Chicago, Illinois 60604.

Please file and record the documents referred to in this letter and cross-index them under the names of the Assignee-Agent, the Builders-Vendors and the Railroad.

The equipment covered by the aforementioned documents consists of the following:

10 2,300 h.p. Model GP-39-2 Diesel Electric Locomotives bearing identifying numbers of the Railroad 3696-3705, both inclusive;

54 62' Insulated Box Cars, AAR Mechanical Designation XLI, bearing identifying numbers of the Railroad AT-625378-AT-625431, both inclusive;

300 61' Insulated Box Cars, AAR Mechanical Designation XLI, bearing identifying numbers of the Railroad AT-622800-AT-623099, both inclusive;

30 77-ton, 50 cu. yd. Air Dump Gondola Cars, AAR Mechanical Designation MWD, bearing identifying numbers of the Railroad AT-186230-AT-186259, both inclusive;

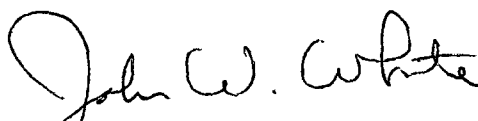
107 60' Plain Box Cars, AAR Mechanical Designation XF, bearing identifying numbers of the Railroad AT-612000-AT-612106, both inclusive; and

24 3,000 h.p. Model C-30-7 Diesel Electric Locomotives, bearing identifying numbers of the Railroad 8099-8122, both inclusive.

There is also enclosed a check for \$50 payable to the Interstate Commerce Commission, representing the fee for recording the Conditional Sale Agreement and related Agreement and Assignment (together constituting one document).

Please stamp all counterparts of the enclosed documents with your official recording stamp. You will wish to retain one copy of the instruments for your files. It is requested that the remaining counterparts be delivered to the bearer of this letter.

Very truly yours,



John W. White
As Agent for
The Atchison, Topeka and Santa Fe
Railway Company

Agatha L. Mergenovich, Secretary,
Interstate Commerce Commission,
Washington, D. C. 20423

Encls.

22A

Interstate Commerce Commission
Washington, D.C. 20423

3/28/80

OFFICE OF THE SECRETARY

John W. White
Cravath, Swaine & Moore
One Chase Manhattan plaza
New York, N.Y. 10005

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 3/28/80 at 9:50am, and assigned re-recording number(s) 11612, & 11612-A

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

11612

RECORDATION NO. Filed 1425

MAR 28 1980 -9 50 AM

INTERSTATE COMMERCE COMMISSION

[CS&M Ref.: 1274-095]

CONDITIONAL SALE AGREEMENT

Dated as of March 1, 1980

Between Each of

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

and

PACCAR INC.,

and

DIFCO INC.,

and

SANTA FE RAIL EQUIPMENT CO.

and

GENERAL ELECTRIC COMPANY

and

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

12-1/4% Conditional Sale Indebtedness Due October 1, 1995

CONDITIONAL SALE AGREEMENT

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* This Table of Contents has been included in this document for convenience of reference only and does not form a part of or affect any construction or interpretation of this document.

sold hereunder) named in Item 1 of Schedule A hereto and any successor or successors for the time being to their respective manufacturing properties and businesses.

The rights and obligations of the Builders under this Agreement are several in accordance with their interests and not joint. Accordingly, whenever this Agreement, by the use of such designation as "the Vendor", "such Builder" or other similar term, confers a right or imposes an obligation upon any corporation named in Item 1 of Schedule A hereto or its successor, such right or obligation shall be construed to accrue to or to be enforceable against only the specific corporation furnishing the units of Equipment giving rise to such right or obligation and its successors as herein provided.

The term "Officer's Certificate" as used in this Agreement shall mean a certificate signed by the President, any Vice President, the Controller, the Secretary, the Treasurer or any Assistant Treasurer of the Railroad, and the term "Request" shall mean a written request for the action therein specified, delivered to the Vendor, dated not more than 10 days prior to the date of delivery to the Vendor and signed on behalf of the Railroad by the President, a Vice President, the Treasurer, any Assistant Treasurer, the Secretary, the Controller or any Assistant Secretary of the Railroad.

ARTICLE 2. Construction and Sale. Pursuant to this Agreement, each Builder shall construct or cause to be constructed the units of the Equipment to be constructed by it as described in Schedule B hereto (such units of Equipment with respect to such Builder being hereinafter called "its Equipment") at its plant described in said Schedule B and will sell and deliver to the Railroad, and the Railroad will purchase from such Builder and accept delivery of and pay for such Equipment, each unit of which shall be constructed in accordance with the specifications referred to in Schedule B hereto and in accordance with such modifications thereof as may be agreed upon in writing between such Builder and the Railroad (which specifications and modifications, if any, are called the "Specifications"). The design, quality and component parts of each unit of the Equipment shall conform, on the date of completion of manufacture of each thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards recommended by the

Association of American Railroads reasonably interpreted as being applicable to equipment of the character of such units of the Equipment and each unit of the Equipment will be new railroad equipment first put into service on or after March 1, 1980.

ARTICLE 3. Inspection and Delivery. Each Builder will deliver the units of its Equipment to the Railroad at the place or places specified in Schedule B hereto (or if said Schedule B does not specify a place or places, at the place or places designated from time to time by the Railroad), freight charges, if any, prepaid and for the account of the Railroad, in accordance with the delivery schedule set forth in Schedule B hereto; provided, however, that no Builder shall have any obligation to deliver any unit of Equipment hereunder (i) at any time after the commencement of any proceedings specified in clause (c) or (d) of Article 16 hereof, (ii) if any event of default (as described in said Article 16), or event which with the lapse of time and/or demand would constitute such an event of default, shall have occurred and be continuing, or (iii) following receipt of written notice from the Assignee that there has been since ~~December 31,~~ September 30, 1979, a material adverse change in the assets, liabilities, business or condition (financial or otherwise) of the Railroad and subsidiary companies until such time as such written notice may be canceled by a further written notice.

Each Builder's obligation as to time of delivery is subject, however, to delays resulting from causes beyond such Builder's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

Notwithstanding the preceding provisions of this Article 3, any Equipment not delivered, accepted and settled for pursuant to Article 4 hereof on or before December 31, 1980 (the "Cut-Off Date"), shall be excluded herefrom. If any unit or units of Equipment shall be excluded from this Agreement pursuant to the preceding sentence, the Builder or Builders of such unit or units and the Railroad shall execute an agreement supplemental hereto limiting this Agreement to the units of Equipment not so

excluded herefrom. If a Builder's failure to deliver Equipment so excluded from this Agreement resulted from one or more of the causes set forth in the immediately preceding paragraph, the Railroad shall nevertheless be obligated to accept such Equipment and pay the full purchase price therefor, determined as provided in the applicable Interim Document.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Railroad and each Builder shall grant to such authorized inspectors reasonable access to its plant. Each Builder agrees to inspect all materials used in the construction of its Equipment in accordance with the standard quality control practices of such Builder. Upon completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the Railroad for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Railroad shall execute and deliver to such Builder a certificate of acceptance (the "Certificate of Acceptance") stating that such unit or units have been inspected and accepted on behalf of the Railroad and are marked in accordance with Article 7 hereof; provided, however, that such Builder shall not thereby be relieved of its warranty referred to in Article 14 hereof.

On delivery of each such unit hereunder at the place specified for delivery, the Railroad will assume the responsibility and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of such unit.

ARTICLE 4. Purchase Price and Payment. The base price or prices per unit of the Equipment are set forth in Schedule B hereto. Such base price or prices are subject to such increase or decrease as is agreed to by the Builder thereof and the Railroad. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased.

If the aggregate Purchase Price of Equipment under this Agreement shall exceed the Maximum Purchase Price (as defined in Item 3 of Schedule A hereto), the

Builder or Builders (and any assignee of the Builders) and the Railroad, unless waived by the Railroad, will enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for and specified by the Railroad, as will, after giving effect to such exclusion, reduce the aggregate Purchase Price of the Equipment under this Agreement to not more than the Maximum Purchase Price, and the Railroad agrees to purchase any such unit or units so excluded from this Agreement from the Builder thereof for cash on the date such unit or units would otherwise have been settled for under this Agreement either directly or, in case the Railroad shall arrange therefor, by means of a conditional sale, equipment trust or other appropriate method of financing as the Railroad shall determine and shall be reasonably acceptable to such Builder.

For the purpose of making settlement, the Equipment of each Builder shall be divided into such number of groups of units of the Equipment, delivered to and accepted by the Railroad (a "Group"), as such Builder and the Railroad may agree to. The term "Closing Date" with respect to any Group of the Equipment shall mean such date (on or after March 26, 1980, and on or prior to the Cut-Off Date), not more than 30 days following presentation by the Builder of the Equipment in such Group to the Railroad of the invoice and the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Railroad by written notice delivered to the Vendor at least 5 business days prior to the Closing Date designated therein; provided, however, that the aggregate of the Invoiced Purchase Prices (as hereinafter defined) of all Equipment settled for pursuant to this Agreement on any Closing Date shall not exceed (y) the amount then on deposit with the Assignee pursuant to the Finance Agreement under which the Assignee is acting as agent for the institutional investors therein named plus (z) the amount payable by the Railroad pursuant to subparagraph (a) of the next paragraph of this Article 4.

The Railroad hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment,

as follows:

(a) on the Closing Date for each Group the amount, if any, by which (x) the Purchase Price of all units of the Equipment for which settlement has theretofore or is then being made, as stated in the invoice or invoices presented in respect of such Closing Date (said invoiced prices being herein called the "Invoiced Purchase Prices"), exceeds (y) the sum of the Maximum Purchase Price and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to this subparagraph (a); and

(b) in 15 consecutive equal annual installments, as hereinafter provided, an amount equal to the aggregate of the Invoiced Purchase Prices for all the Equipment less the amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph (the aggregate of said installments being hereinafter called the "CSA Indebtedness").

In the event that on any Closing Date the final Purchase Price of any Group has not been finally determined, the invoice presented may be for an estimated Purchase Price (as evidenced by the words "Interim Invoice" written on the face of such invoice), subject to adjustment upon determination of the final Purchase Price, and a supplemental invoice may be presented by the appropriate Builder at least 10 business days prior to any subsequent Closing Date for settlement on such subsequent Closing Date for any increase in the Purchase Price; it being agreed by such Builder that the estimated Purchase Price in any Interim Invoice presented by it shall be calculated in such manner that in no event shall such estimated Purchase Price be in excess of the final Purchase Price of such Group. If a supplemental invoice is presented to the Railroad by the Builder at least 10 business days prior to any subsequent Closing Date with respect to any Group of Equipment, such supplemental invoice shall be settled for at such subsequent Closing Date. If a supplemental invoice is presented to the Railroad by a Builder after, or less than 10 business days prior to, the Closing Date when all units of the Equipment of the Builder shall have been delivered, accepted and settled for, but prior to the Repayment Date (as defined in Paragraph 4 of the Finance Agreement), the Railroad shall designate a Closing Date with respect to

such supplemental invoice. If a supplemental invoice is presented by a Builder after the Repayment Date, it shall be paid in cash by the Railroad to such Builder in accordance with the terms of the original purchase order given by the Railroad and accepted by such Builder in respect of its Equipment.

The installments of the CSA Indebtedness payable pursuant to subparagraph (b) of the preceding paragraph of this Article 4 shall be payable annually on October 1, in each year commencing on October 1, 1981, to and including October 1, 1995, or, if any such date is not a business day, on the next business day. The unpaid portion of the CSA Indebtedness shall bear interest from the respective Closing Dates on which such indebtedness was incurred at the rate of 12-1/4% per annum. All such interest shall be payable, to the extent accrued, on April 1 and October 1 in each year, commencing October 1, 1980, or, if any such date is not a business day, on the next business day.

All interest under this Agreement shall be calculated on the basis of a 360-day year of 12 30-day months.

The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in Chicago, Illinois, or New York, New York, are authorized or obligated to remain closed.

The Railroad will pay, to the extent legally enforceable, interest at the rate of 13-1/4% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

Except as provided in Article 8 hereof, the Railroad shall not have the privilege of prepaying any installment of its indebtedness hereunder prior to the date it becomes due.

In the event the Vendor, pursuant to Article 15

hereof, assigns the right to receive the payments herein provided to be made by the Railroad, the assignee thereof may request the Railroad to make and the Railroad shall make such payments to it at such address as shall be supplied to the Railroad by the assignee.

ARTICLE 5. Taxes. All payments to be made by the Railroad hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, Federal or foreign taxes (other than net income, gross receipts [except gross receipts taxes in the nature of or in lieu of sales or use taxes], excess profits and similar taxes) or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called "impositions"), all of which impositions the Railroad assumes and agrees to pay on demand. The Railroad will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its interest therein and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the security interest of the Vendor or result in a lien upon any part of the Equipment; provided, however, that the Railroad shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the interest or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any such impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Railroad shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; provided, however, that the Railroad shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Railroad shall have approved the payment thereof.

ARTICLE 6. Security Interest in the Equipment.

The Vendor shall and hereby does retain a security interest in the Equipment until the Railroad shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as provided in this Agreement. Any and all additions to the Equipment that are not readily removable without damage to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 8 hereof, when and only when the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, shall have been paid, and all the Railroad's obligations herein contained shall have been performed by the Railroad, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Vendor. However, the Vendor, upon receipt of a Request at that time, will (a) execute a bill or bills of sale for the Equipment transferring and releasing its interest therein to the Railroad, or upon its order, free of all claims, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Railroad, (b) execute and deliver, for filing in all necessary public offices, such instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the release of the security interest of the Vendor in the Equipment and (c) pay to the Railroad any money paid to the Vendor pursuant to Article 8 hereof and not theretofore applied as therein provided. The Railroad hereby waives any and all rights in or to the payment of any penalty or damages for failure to execute and deliver such bill or bills of sale or instruments, except for failure to execute and deliver the same within a reasonable time after receipt of a Request.

ARTICLE 7. Marking of the Equipment.

The Railroad will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in Schedule B hereto, or in the case of Equipment not there

listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the words "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION" or other appropriate markings approved by the Vendor with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's interest in the Equipment and its rights under this Agreement. The Railroad will not place any such unit in operation or exercise any control or dominion over the same until such markings have been made thereon and will replace promptly any such markings which may be removed, defaced, obliterated or destroyed. The Railroad will not change the number of any unit of the Equipment except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor by the Railroad and filed, recorded and deposited by the Railroad in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Railroad will not allow the name of any person, firm, association or corporation to be placed on any of the Equipment as a designation which might be interpreted as a claim of ownership thereof by the Railroad or by any person, firm, association or corporation other than the Vendor; provided, however, that the Railroad may cause the Equipment to be lettered with the names or initials or other insignia of the Railroad or its affiliates.

ARTICLE 8. Casualty Occurrences; Insurance. In the event that any unit of the Equipment shall be worn out, lost, stolen, destroyed, irreparably damaged or otherwise rendered permanently unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise or the Purchase Price (or any portion thereof) of any unit shall have been refunded by a Builder pursuant to such Builder's patent indemnities therefor as set forth in Item 2 of Schedule A hereto (such occurrences being hereinafter called "Casualty Occurrences"), the Railroad shall promptly and fully inform the Vendor in regard thereto (after it has knowledge of such Casualty Occurrence). When the aggregate Casualty Value (as defined

herein) of all units having suffered a Casualty Occurrence (exclusive of units having suffered a Casualty Occurrence with respect to which a payment shall have been made to the Vendor pursuant to this Article 8) hereunder shall exceed \$250,000 (or such lesser amount as the Railroad may elect), the Railroad shall promptly pay to the Vendor a sum equal to the aggregate Casualty Value of such units of the Equipment as of the date of such payment and shall file with the Vendor an Officer's Certificate setting forth the Casualty Value of each unit of the Equipment suffering a Casualty Occurrence.

So long as no event of default shall have occurred and be continuing, any money paid to the Vendor pursuant to the preceding paragraph of this Article 8 shall be used, as the Railroad shall from time to time direct in a Request, in whole or in part, to prepay installments of CSA Indebtedness or toward the cost of a unit or units of new standard-gauge railroad equipment (other than passenger or work equipment) to replace units suffering a Casualty Occurrence; provided, however, that, if the amount (excluding amounts referred to in the immediately following proviso) paid to the Vendor pursuant to the preceding paragraph of this Article 8 and not theretofore applied toward the cost of replacement units exceeds \$4,000,000 at the due date of an annual installment of the CSA Indebtedness, such excess shall be applied on such date to prepay installments of the CSA Indebtedness; provided further, however, that the Railroad shall direct that any money paid to the Vendor in respect of Equipment which shall be worn out be applied only toward the cost of replacement units and not to prepay any installment of the CSA Indebtedness; provided further, however, that no caboose shall be included as a replacement unit if the Purchase Price thereof (together with the Purchase Price of all other cabooses constituting replacement units and included as Equipment hereunder) shall exceed 3% of the outstanding CSA Indebtedness at the date of such Request. In case any money is applied pursuant to this Article 8 to prepay indebtedness, it shall be accompanied by accrued interest on the amount prepaid and shall be so applied to reduce each installment of CSA Indebtedness thereafter falling due pro rata.

The "Casualty Value" of each unit of the Equipment (other than a replacement unit) shall be deemed to be that amount which bears the same ratio to the original Purchase Price thereof (less, in the event the Railroad

shall have made any payments under the provisions of subparagraph (a) of the third paragraph of Article 4 hereof, an amount which bears the same ratio to the aggregate of all such payments as the original Purchase Price of such unit bears to the original aggregate Purchase Price of all the Equipment) as the unpaid CSA Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) as of the date payment is made with respect to such Casualty Occurrence bears to the original CSA Indebtedness. The Casualty Value of each replacement unit shall be deemed to be that amount which bears the same ratio to the portion of the cost thereof paid by the Vendor as the unpaid CSA Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) as of the date payment is made with respect to such Casualty Occurrence bears to the unpaid CSA Indebtedness (without giving effect to any such prepayments) as of the date of acquisition by the Vendor of such replacement unit.

The Railroad will cause any replacement unit or units to be marked as provided in Article 7 hereof. Any and all such replacements units shall constitute accessions to the Equipment and shall be subject to all appropriate terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement; provided, however, that nothing herein shall result in any Builder having any liability or obligation pursuant to this Agreement with respect to any replacement unit or units not manufactured by it. Title to all such replacement units shall be free and clear of all liens and encumbrances except the liens permitted by the second paragraph of Article 12 hereof and shall be taken initially and shall remain in the name of the Vendor subject to the provisions hereof, and the Railroad shall execute, acknowledge, deliver, file, record or deposit all such documents (including the filing of a supplement to this Agreement with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303) and do any and all such acts as may be necessary to cause such replacement units to come under and be subject to this Agreement. All such replacement units shall be guaranteed and warranted in like manner as is customary at the time for similar equipment.

Whenever the Railroad shall deliver a Request to apply amounts toward the cost of any replacement unit or

units, the Railroad shall also deliver therewith bills of sale, invoices and certificates of acceptance, substantially in the form provided by the Assignment, together with an opinion of counsel for the Railroad that the Vendor has a valid and perfected security interest in each such replacement unit, free and clear from all claims, liens, security interests and other encumbrances except the rights of the Railroad under this Agreement, that each such unit has come under and become subject to this Agreement and that an appropriate supplement to this Agreement has been executed and filed with the Interstate Commerce Commission as required by the next preceding paragraph hereof.

In order to facilitate the sale or other disposition of any Equipment suffering a Casualty Occurrence, the Vendor shall, upon Request, after payment by the Railroad of a sum equal to the Casualty Value of such Equipment, execute and deliver to the Railroad or the Railroad's assignee or nominee, a bill of sale (without warranties) for such Equipment, and such other documents as may be required to release such Equipment from the terms and scope of this Agreement, in such form as may be reasonably requested by the Railroad.

So long as no event of default shall have occurred and be continuing, any money paid to the Vendor pursuant to this Article 8 shall, if the Railroad shall direct, be invested, pending its application as hereinabove provided, in such of the following as may be specified by the Railroad: (i) direct obligations of the United States of America or obligations for which the full faith and credit of the United States is pledged to provide for the payment of principal and interest, (ii) open market commercial paper rated A-1 or A-2 by Standard & Poor's Corporation or prime-1 or prime-2 by NCO/Moody's Commercial Paper Division of Moody's Investors Service, Inc., or the successor of either of them, or (iii) certificates of deposit of domestic commercial banks in the United States of America having total capital and surplus in excess of \$100,000,000, in each case maturing in not more than one year from the date of such investment (such investments being herein called "Investments"). Any such Investments shall from time to time be sold and the proceeds reinvested in such Investments as the Railroad may in a Request direct. Any interest received by the Vendor on any Investments shall be held by the Vendor and applied as hereinafter provided. Upon any sale or the maturity of any Invest-

ments, the proceeds thereof, plus any interest received by the Vendor thereon, up to the cost (including accrued interest) thereof, shall be held by the Vendor for application pursuant to this Article 8, and any excess shall be paid to the Railroad. If such proceeds (plus such interest) shall be less than such cost, the Railroad will promptly pay to the Vendor an amount equal to such deficiency. The Railroad will pay all expenses incurred by the Vendor in connection with the purchase and sale of Investments.

If any unit of the Equipment is removed for repairs other than running repairs or becomes unsuitable or not necessary for continued use by the Railroad in its business or operations, such occurrence shall, upon the election of the Railroad evidenced by a Request, constitute a Casualty Occurrence subject to the provisions of this Article 8; provided, however, that the Railroad shall direct any money paid to the Vendor in respect thereof to be applied only toward the cost of replacement units and not to prepay any installment of CSA Indebtedness.

Notwithstanding anything to the contrary contained in this Article 8, if one or more events of default shall have occurred and be continuing, all money held by the Vendor pursuant to this Article 8 (including, for this purpose, Investments) shall be applied by the Vendor as if such money were money received upon the sale of Equipment pursuant to Article 17 hereof.

The Railroad will at all times, at its own expense, cause to be carried and maintained property and casualty insurance in respect of the Equipment, and public liability insurance, in amounts and against risks customarily insured against (taking into account self-insurance) by the Railroad in respect of similar equipment owned by it.

ARTICLE 9. Maintenance; Compliance with Laws and Rules. The Railroad agrees that, at its own cost and expense, it will maintain and keep the Equipment in good operating order, repair and condition, ordinary wear and tear excepted, and eligible (in the case of Equipment other than locomotives) for railroad interchange in accordance with the interchange rules of the Association of American Railroads or other applicable regulatory body.

During the term of this Agreement, the Railroad will at all times comply in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all laws of the jurisdictions in which its operations involving the Equipment may extend, with the Interchange Rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration or replacement of or addition to any part on any unit of the Equipment, the Railroad will conform therewith, at its own expense; provided, however, that the Railroad may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor (if the Vendor shall at any time so advise the Railroad), adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 10. Reports and Inspections. On or before April 1 in each year, commencing with the year 1981, the Railroad shall furnish to the Vendor an Officer's Certificate (a) setting forth as at the preceding December 31 the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding 12 months (or since the date of this Agreement in the case of the first such statement) or that have been withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 7 hereof have been preserved or replaced. The Vendor shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

ARTICLE 11. Possession and Use. The Railroad, so long as an event of default shall not have occurred and be continuing hereunder, shall be entitled, from and after delivery of units of the Equipment by the Builder thereof to the Railroad, to the possession of such units of Equip-

ment and the use thereof upon the lines of railroad owned or operated by it either alone or jointly with others and whether under lease or otherwise, or upon the lines of railroad owned or operated by any railroad company controlled by, or under common control with, the Railroad, or over which it has trackage rights, or upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, and may enter into a written lease of one or more units of the Equipment for a term not exceeding six months with any affiliate or any other solvent railroad company incorporated in the United States of America (or any state thereof or the District of Columbia), but only upon and subject to all the terms and conditions of this Agreement; provided, however, that any such lease permitted hereunder shall state expressly that the rights of the lessee thereunder are subject and subordinate to the rights and remedies of the Vendor under this Agreement; and, provided, further, however, that neither the Railroad nor any such lessee shall be entitled to assign the Equipment for use or service outside of the United States of America except in normal interchange.

Any such lease may provide that the lessee, so long as it shall not be in default under such lease, shall be entitled to the possession of the Equipment included in such lease and the use thereof subject to the rights and remedies of the Vendor in respect of the Equipment covered by such lease upon the occurrence of an event of default hereunder; and, subject to the provisions of Article 7 hereof, may provide for lettering or marking upon such Equipment for convenience of identification of the leasehold interest of such lessee therein. A copy of the form of each lease (and of each amendment thereto, if any) shall promptly be filed with the Vendor.

ARTICLE 12. Prohibition Against Liens. The Railroad will pay or discharge any and all sums claimed by any party from, through or under the Railroad or its successors or assigns which, if unpaid, might become a lien, charge or security interest on or in the Equipment, or any unit thereof, equal or superior to the Vendor's interest therein; provided, however, that the Railroad shall be under no obligation to pay or discharge any such claim so long as it is contesting in good faith and by appropriate legal proceedings such claim and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor in or to the

Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

ARTICLE 13. Railroad's Indemnities. The Railroad will indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of retention by the Vendor of a security interest in the Equipment, the use and operation thereof by the Railroad during the period when said security interest remains in the Vendor or the transfer of said security interest in the Equipment by the Vendor pursuant to any of the provisions of this Agreement.

ARTICLE 14. Patent Indemnities; Builder's Warranty of Material and Workmanship. Each Builder's indemnities with respect to patent infringement, its warranty of material and workmanship and the limitations of its liability with regard thereto and certain agreements of the Railroad are set forth in Item 2 of Schedule A hereto.

ARTICLE 15. Assignments. The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Vendor. A sale, assignment, transfer or disposition to a solvent, Class 1 railroad company organized under the laws of the United States of America or any of the states thereof which shall acquire all or substantially all the lines of railroad of the Railroad, and which, by execution of an appropriate instrument satisfactory to the Vendor, shall assume and agree to perform each of, and all, the obligations and covenants of the Railroad under this Agreement, shall not be deemed a breach of this covenant and thereupon, the successor railroad company shall be for all

purposes the "Railroad" hereunder.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Railroad, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve any Builder from, any of the obligations of such Builder to construct and deliver the Equipment in accordance with this Agreement or to respond to its warranties and indemnities contained or referred to in Article 14 hereof and Schedule A hereto, or relieve the Railroad of any of its obligations to such Builder under Articles 2, 3, 4, 5, 13 and 14 hereof, Schedule A hereto and this Article 15 or of any other obligation which, according to its terms or context, is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to the Railroad, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall by virtue of such assignment acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Railroad of the notification of any such assignment, all payments thereafter to be made by the Railroad under this Agreement to the Vendor shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

The Railroad recognizes that it is the custom of railroad equipment manufacturers to assign conditional sale agreements and understands that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Railroad represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder and for the purpose of inducing such acquisition, that, in the event of such assignment, the rights of such assignee to the entire unpaid indebtedness in respect of the Purchase Price or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense,

setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of any Builder with respect to its Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by a Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against the respective Builders.

The Railroad will (a) in connection with each settlement for the Equipment subsequent to such assignment, deliver to the assignee, at least five business days prior to the Closing Date for the Group fixed in the notice by the Railroad, all documents required by the terms of such assignment to be delivered to such assignee in connection with such settlement, in such number of counterparts or copies as may reasonably be requested, except for any opinion of counsel for such assignee, and (b) furnish to such assignee such number of counterparts of any other certificate or document required by the Vendor as may reasonably be requested.

If this Agreement shall have been assigned by the Builders and the assignee shall not make payment to a Builder with respect to units of the Equipment of such Builder as provided in the instrument making such assignment, such Builder will promptly notify the Railroad of such event and, if such amount shall not have been previously paid by such assignee, the Railroad will, not later than 60 days after the date such payment was due, pay the full purchase price therefor, determined as provided in this Agreement (together with interest from the day such payment was due to the date of payment by the Railroad at the highest prime rate of interest charged by any of the four New York City banks having the largest total assets in effect on the date such payment was due), such payment to be made in cash after the delivery of such Equipment, either directly, or, in case the Railroad shall arrange therefor, by means of a conditional sale agreement, equipment trust or such other appropriate method of financing as the Railroad shall determine and as shall be reasonably acceptable to such Builder.

ARTICLE 16. Defaults. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) the Railroad shall fail to pay in full any indebtedness in respect of the Purchase Price of the Equipment as provided in this Agreement or shall fail to pay in full any other sum payable by the Railroad as provided in this Agreement within five days after the same shall have become due and payable; or

(b) the Railroad shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Equipment on its part to be kept or performed or to make provision satisfactory to the Vendor for such compliance; or

(c) a petition for reorganization under Title 11 of the United States Code, as now constituted or hereafter amended, shall be filed by or against the Railroad and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been and shall not continue to be duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees, within 60 days after such petition shall have been filed and otherwise in accordance with the provisions of 11 U.S.C. § 1168, and successor provision, as the same may be hereafter amended; or

(d) any other proceedings shall be commenced by or against the Railroad for any relief which includes, or might result in, any modification of the obligation of the Railroad hereunder under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffec-

tiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been and shall not continue to be duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Railroad or for its property in connection with any such proceedings in such manner that such obligations have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have been commenced; or

(e) the Railroad shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Railroad and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Vendor, declare (hereinafter called a "Declaration of Default") the entire indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. The Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Railroad wherever situated. The Railroad shall promptly notify the Vendor in writing of any event which has come to its attention which constitutes, or which with the giving of notice and/or lapse of time could constitute, an event of default hereunder and of what action, if any, the Railroad has taken or proposes to take to remedy such event of default or event.

The Vendor may at its election waive any such event of default and its consequences and rescind and annul any Declaration of Default by notice to the Railroad in

writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default had been made. Notwithstanding the provisions of this paragraph, it is agreed by the Railroad that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 17. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may, subject to compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken by its agent or agents immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Railroad or any other person and for such purpose may enter upon the Railroad's premises or any other premises where the Equipment may be located (without judicial process if this can be done without breach of the peace) and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Railroad.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall reasonably designate a point or points upon the premises of the Railroad for the delivery of the Equipment to the Vendor, the Railroad shall, at its own expense, forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any part of the Equipment has been interchanged or leased to return the Equipment so interchanged or leased), cause (a) the Equipment to be moved to such point or points on its lines as shall be designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor and (b) the Equipment to be moved to such interchange point or points of the Railroad as shall be designated by the Vendor upon any sale, lease or other disposal of all or any part of the Equipment by the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines or premises of the Railroad

until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish, without charge for rent, storage or insurance (which the Railroad agrees to maintain as herein provided), the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Railroad, to provide proper maintenance for the Equipment during such storage and to permit inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Railroad requiring specific performance hereof. The Railroad hereby waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 17 provided) may at its election and upon such notice as is hereinafter set forth retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Railroad by telegram or registered mail, addressed as provided in Article 21 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Railroad's rights in the Equipment shall thereupon terminate and all payments made by the Railroad may be retained by the Vendor as compensation for the use of the Equipment by the Railroad; provided, however, that if the Railroad, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor

in retaking possession of, removing and storing the Equipment and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad; provided, further, that if the Railroad or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Railroad and to any other persons to whom the law may require notice of the time and place, may sell the Equipment, or any unit thereof, free from any and all claims of the Railroad or any other party claiming from, through or under the Railroad, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Railroad should tender full payment of the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad. The proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at

such place or places and at such time or times as the Vendor may specify, in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine. The Vendor or the Railroad may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Railroad shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed to the Railroad as provided in Article 21 hereof. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 offerees have been solicited in writing to submit bids), it shall be subject to the right of the Railroad to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Railroad (except to the extent of surplus money received as hereinafter provided in this Article 17), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of the sums due to the Vendor from the Railroad hereunder. From and after the date of any such sale, the Railroad shall pay to the Vendor the per diem interchange for each unit of Equipment which shall not have been assembled, as hereinabove provided, by the date of such sale for each day from the date of such sale to the date of delivery to the purchaser at such sale.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly

granted to the Railroad shall not otherwise alter or affect the Vendor's rights or the Railroad's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Railroad's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Railroad shall pay the amount of such deficiency to the Vendor upon demand, together with interest from the date of such demand to the date of payment by the Railroad at the rate per annum set forth in Article 4 hereof applicable to amounts remaining unpaid after becoming due and payable. If the Railroad shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Railroad.

The Railroad will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including attorneys' fees, if any, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 18. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Railroad to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Railroad, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment or any unit thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 19. Recording. The Railroad will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303; and the Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit, record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its interest in the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement.

The Railroad will promptly furnish to the Vendor evidence of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Railroad with respect thereto satisfactory to the Vendor.

ARTICLE 20. Payment of Expenses. The Railroad will pay all reasonable costs and expenses (other than the fees and expenses of counsel for the Builders) incident to this Agreement and the first assignment of this Agreement (including the fees and expenses of an agent, if the first assignee is an agent), and any instrument supplemental or related hereto or thereto, including all fees and expenses of Messrs. Cravath, Swaine & Moore, special counsel for the first assignee of this Agreement and for any party acquiring interests in such first assignment, and all reasonable costs and expenses in connection with the transfer by any party of interests acquired in such first assignment, but excluding all fees and expenses of any other counsel for such parties.

ARTICLE 21. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at its chief

place of business at the following specified addresses:

(a) to the Railroad, at 80 East Jackson Boulevard, Chicago, Illinois 60604, Attention of Vice President-Finance,

(b) to a Builder, at its address specified in Item 1 of Schedule A hereto, and

(c) to any assignee of the Vendor or of the Railroad, at such address as may have been furnished in writing to each of the other parties hereto by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 22. Article Headings; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including the Schedules hereto, exclusively states the rights of the Vendor and the Railroad with respect to the Equipment and supersedes all other agreements, oral or written (including the Interim Documents), with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Vendor and the Railroad.

ARTICLE 23. Law Governing. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred pursuant to 49 U.S.C. § 11303, and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the marking of the units of Equipment provided for in Article 7 hereof.

ARTICLE 24. Execution. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. It shall not be necessary that any counterpart be signed by all the parties so long as the Railroad and each Builder has executed and delivered a counterpart to the other, whereupon this Agreement shall become effective with respect to the Railroad and such Builder. Each Builder shall be bound hereunder notwithstanding the failure of any other Builder to execute and deliver this Agreement or to perform its obligations hereunder. Although this Agreement is dated, for convenience, as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by their officers or other persons, thereunto duly authorized, and their respective corporate seals to be hereunto affixed, duly attested, all as of the date first above written.

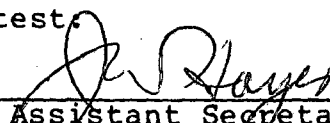
THE ATCHISON, TOPEKA AND
SANTA FE RAILWAY COMPANY,

[Corporate Seal]

by


Vice President-FINANCE

Attest.


Assistant Secretary

GENERAL MOTORS CORPORATION,
(Electro-Motive Division),

[Corporate Seal]

by

Vice President

Attest:

Assistant Secretary

PACCAR INC.,

[Corporate Seal]

by

Vice President

Attest:

Secretary

DIFCO INC.,

[Corporate Seal]

by

Vice President

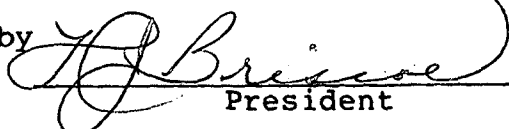
Attest:

Secretary

SANTA FE RAIL EQUIPMENT CO.,

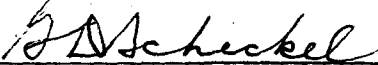
[Corporate Seal]

by



President

Attest:



ASSISTANT Secretary

GENERAL ELECTRIC COMPANY,

[Corporate Seal]

by

Attest:

Attesting Secretary

STATE OF ILLINOIS,))
COUNTY OF COOK,) ss.:

On this 27th day of March 1980, before me personally appeared R. W. HARPER, to me personally known, who, being by me duly sworn, says that he is a Vice President of THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

E. H. Arrequin
Notary Public

[Notarial Seal]

STATE OF ILLINOIS,)
COUNTY OF COOK,) ss.:

On this day of March 1980, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (Electro-Motive Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

STATE OF WASHINGTON,)
) ss.:
COUNTY OF KING,)

On this day of March 1980, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of PACCAR INC, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

STATE OF OHIO,)
) ss.:
COUNTY OF HANCOCK,)

On this day of March 1980, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of DIFCO INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this ^{24th} day of March 1980, before me personally appeared H. J. Bruscoe, to me personally known, who, being by me duly sworn, says that he is the President of SANTA FE RAIL EQUIPMENT CO., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

G. D. Graft

Notary Public

My Commission Expires January 14, 1981

[Notarial Seal]

COMMONWEALTH OF PENNSYLVANIA,)
) ss.:
COUNTY OF EIRE,)

On this day of March 1980, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is of GENERAL ELECTRIC COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

SCHEDULE A

to

Conditional Sale Agreement

- Item 1. (a) General Motors Corporation (Electro-Motive Division), a Delaware corporation, La Grange, Illinois 60525.
- (b) PACCAR Inc, a Delaware corporation, 1400 North 4th Street, Renton, Washington 98055, with a copy to General Counsel, PACCAR Inc, P. O. Box 1518, Bellevue, Washington 98009.
- (c) Difco Inc., an Ohio corporation, Differential Avenue, Findlay, Ohio 45840.
- (d) Santa Fe Rail Equipment Co., a Delaware corporation, 109 West Ninth Street, Topeka, Kansas 66628.
- (e) General Electric Company, a New York corporation, 2901 East Lake Road, Erie, Pennsylvania 16531.
- Item 2. (a) GM Warranty. General Motors Corporation ("GM") warrants that the Equipment manufactured by it hereunder is of the kind and quality described in, and will be built in accordance with, the Specifications referred to in Article 2 of this Agreement and is suitable for the ordinary purposes for which such Equipment is used and warrants each unit of such Equipment to be free from defects in material and workmanship which may develop under normal use and service within two years from date of delivery of such unit or before such unit has been operated 250,000 miles, whichever event shall first occur. GM agrees to correct such defects, which examination shall disclose to GM's satisfaction to be defective, by repair or replacement F.O.B. factory and such correction shall constitute fulfillment of GM's obligation with respect to such defect under this warranty. GM warrants specialties not of its own specification or design to the same extent that

the suppliers of such specialties warrant such items to GM. GM further agrees with the Railroad that neither the inspection as provided in Article 3 of this Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or modification by the Railroad of any of its rights under this Item 2(a).

THERE ARE NO WARRANTIES WITH RESPECT TO MATERIAL AND WORKMANSHIP, EXPRESSED OR IMPLIED, MADE BY GM EXCEPT THE WARRANTIES SET OUT ABOVE.

GM Patent Indemnification. GM shall defend any suit or proceeding brought against the Railroad and/or each assignee of GM's rights under this Agreement so far as the same is based on a claim that the Equipment of GM's specification, or any part thereof, furnished under this Agreement constitutes an infringement of any patent, if notified promptly in writing and given authority, information and assistance (at GM's expense) for the defense of same, and GM shall pay all damages and costs awarded therein against the Railroad or any such assignee.

In case any unit of such Equipment, or any part thereof, is in such suit held to constitute infringement and the use of such unit or part is enjoined, GM shall at its option and at its own expense either procure for the Railroad and any such assignee the right to continue using such unit or part, or replace the same with noninfringing equipment subject to this Agreement, or modify it so it becomes noninfringing, or remove such unit and refund the Purchase Price and the transportation and installations costs thereof. If the Purchase Price is so refunded, such refund shall be made to the assignee of GM's rights under this Agreement if this Agreement has been so assigned. GM will assume no liability for patent infringement by reason of purchase, manufacture, sale or use of devices not included in and covered by its specification. The foregoing states the entire liability of GM for patent infringement by the Equipment or any part thereof.

(b) PACCAR Warranty. PACCAR Inc ("PACCAR") warrants that its Equipment will be built in accordance with the requirements, specifications and standards set forth or referred to in Article 2 of this Agreement and, except in cases of articles and materials specified by the Railroad and not manufactured by PACCAR, warrants its Equipment to be free from defects in material and workmanship under normal use and service, the liability of PACCAR under this warranty being limited, as the Railroad may elect: (i) to repair the defects at PACCAR's plant; or (ii) to replacement of a defective part; or (iii) to the cost of repair or replacement according to the AAR Code of Rules Governing Condition of and Repairs to Freight and Passenger Cars with Interchange of Traffic. PACCAR shall be given reasonable opportunity to verify any claim of defects in workmanship or materials.

The foregoing warranty of PACCAR shall begin at the time of delivery of a unit of its Equipment to the Railroad and terminate two years after such delivery. PACCAR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. The Railroad's rights under the foregoing warranty shall be its sole and exclusive remedy and PACCAR will have no liability for lost profit or for indirect, incidental, consequential or commercial losses. This warranty is expressly in lieu of all other warranties expressed or implied on the part of PACCAR, except for the patent indemnification included in this Item 2(b), and PACCAR neither assumes nor authorizes any person to assume for it any other warranty liability in connection with the construction and delivery of its Equipment, except as aforesaid.

PACCAR further agrees with the Railroad that neither the inspection as provided in Article 3 of this Agreement, nor any examination, nor the acceptance of any units of its Equipment as provided in said Article 3 shall be deemed a waiver or modification by the Railroad of any of its rights under this Item 2(b).

PACCAR Patent Indemnification. Except in cases

of articles or materials specified by the Railroad and not manufactured by PACCAR and in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed by PACCAR, PACCAR agrees to indemnify, protect and hold harmless the Railroad from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Railroad, its assigns or the users of its Equipment because of the use in or about the construction or operation of any of its equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Railroad likewise will indemnify, protect and hold harmless the Vendor from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor because of the use in or about the construction or operation of any of its Equipment of any article or material specified by the Railroad and not manufactured by PACCAR or of any design, system, process, formula or combination specified by the Railroad and not developed or purported to be developed by PACCAR which infringes or is claimed to infringe on any patent or other right. PACCAR agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Railroad every claim, right and cause of action which PACCAR has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Railroad and purchased or otherwise acquired by PACCAR for use in or about the construction or operation of any of its Equipment on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. PACCAR further agrees to execute and deliver to the Railroad or the users of its Equipment all and every such further assurance as may be reasonably requested by the

Railroad more fully to effectuate the assignment and delivery of every such claim, right and cause of action. PACCAR will give notice to the Railroad of any claim known to PACCAR from which liability may be charged against the Railroad hereunder and the Railroad will give notice to PACCAR of any claim known to the Railroad from which liability may be charged against PACCAR hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, the satisfaction and discharge of this Agreement or the termination of this Agreement in any manner.

(c) Difco Warranty. Difco Inc. ("Difco") warrants that its Equipment will be built in accordance with the requirements, specifications and standards set forth or referred to in Article 2 of this Agreement and, except in cases of articles and materials specified by the Railroad and not manufactured by Difco, warrants its Equipment to be free from defects in material and workmanship under normal use and service, the liability of Difco under this warranty being limited, as the Railroad may elect: (i) to repair the defects at Difco's plant; or (ii) to replacement of a defective part; or (iii) to the cost of repair or replacement according to the AAR Code of Rules Governing Condition of and Repairs to Freight and Passenger Cars with Interchange of Traffic. Difco shall be given reasonable opportunity to verify any claim of defects in workmanship or materials.

The foregoing warranty of Difco shall begin at the time of delivery of a unit of its Equipment to the Railroad and terminate two years after such delivery. DIFCO MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. The Railroad's rights under the foregoing warranty shall be its sole and exclusive remedy and Difco will have no liability for lost profit or for indirect, incidental, consequential or commercial losses. This warranty is expressly in lieu of all other warranties expressed or implied on the part of Difco, except for the patent indemnification included in this Item 2(c), and Difco

neither assumes nor authorizes any person to assume for it any other warranty liability in connection with the construction and delivery of its Equipment, except as aforesaid.

Difco further agrees with the Railroad that neither the inspection as provided in Article 3 of this Agreement, nor any examination, nor the acceptance of any units of its Equipment as provided in said Article 3 shall be deemed a waiver or modification by the Railroad of any of its rights under this Item 2(c).

Difco Patent Indemnification. Except in cases of articles or materials specified by the Railroad and not manufactured by Difco and in the case of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed by Difco, Difco agrees to indemnify, protect and hold harmless the Railroad from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Railroad, its assigns or the users of its Equipment because of the use in or about the construction or operation of any of its equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Railroad likewise will indemnify, protect and hold harmless the Vendor from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor because of the use in or about the construction or operation of any of its Equipment of any article or material specified by the Railroad and not manufactured by Difco or of any design, system, process, formula or combination specified by the Railroad and not developed or purported to be developed by Difco which infringes or is claimed to infringe on any patent or other right. Difco agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Railroad every

claim, right and cause of action which Difco has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Railroad and purchased or otherwise acquired by Difco for use in or about the construction or operation of any of its Equipment on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. Difco further agrees to execute and deliver to the Railroad or the users of its Equipment all and every such further assurance as may be reasonably requested by the Railroad more fully to effectuate the assignment and delivery of every such claim, right and cause of action. Difco will give notice to the Railroad of any claim known to Difco from which liability may be charged against the Railroad hereunder and the Railroad will give notice to Difco of any claim known to the Railroad from which liability may be charged against Difco hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, the satisfaction and discharge of this Agreement or the termination of this Agreement in any manner.

The Railroad, for the benefit of any assignee of Difco pursuant to the Assignment (or otherwise), for value received, hereby unconditionally guarantees to such assignee the due and punctual performance of all obligations of Difco under the Assignment (or any such other assignment) and under its warranty and patent indemnification set forth above.

(d) Santa Fe Warranty. Santa Fe Rail Equipment Co. ("Santa Fe Rail") warrants that its Equipment will be built in accordance with the requirements, specifications and standards set forth or referred to in Article 2 of this Agreement and, except in cases of articles and materials specified by the Railroad and not manufactured by Santa Fe Rail, warrants its Equipment to be free from defects in material and workmanship under normal use and

service, the liability of Santa Fe Rail under this warranty being limited, as the Railroad may elect: (i) to repair the defects at Santa Fe Rail's plant; or (ii) to replacement of a defective part; or (iii) to the cost of repair or replacement according to the AAR Code of Rules Governing Condition of and Repairs to Freight and Passenger Cars with Interchange of Traffic. Santa Fe Rail shall be given reasonable opportunity to verify any claim of defects in workmanship or materials.

The foregoing warranty of Santa Fe Rail shall begin at the time of delivery of a unit of its Equipment to the Railroad and terminate two years after such delivery. SANTA FE RAIL MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. The Railroad's rights under the foregoing warranty shall be its sole and exclusive remedy and Santa Fe Rail will have no liability for lost profit or for indirect, incidental, consequential or commercial losses. This warranty is expressly in lieu of all other warranties expressed or implied on the part of Santa Fe Rail, except for the patent indemnification included in this Item 2(d), and Santa Fe Rail neither assumes nor authorizes any person to assume for it any other warranty liability in connection with the construction and delivery of its Equipment, except as aforesaid.

Santa Fe Rail further agrees with the Railroad that neither the inspection as provided in Article 3 of this Agreement, nor any examination, nor the acceptance of any units of its Equipment as provided in said Article 3 shall be deemed a waiver or modification by the Railroad of any of its rights under this Item 2(d).

Santa Fe Rail Patent Indemnification. Except in cases of articles or materials specified by the Railroad and not manufactured by Santa Fe Rail and in the cases of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed by Santa Fe Rail, Santa Fe Rail agrees to indemnify, protect and hold harmless the Railroad from and against any and all liability, claims, costs,

charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Railroad, its assigns or the users of its Equipment because of the use in or about the construction or operation of any of its equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Railroad likewise will indemnify, protect and hold harmless the Vendor from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor because of the use in or about the construction or operation of any of its Equipment of any article or material specified by the Railroad and not manufactured by Santa Fe Rail or of any design, system, process, formula or combination specified by the Railroad and not developed or purported to be developed by Santa Fe Rail which infringes or is claimed to infringe on any patent or other right. Santa Fe Rail agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Railroad every claim, right and cause of action which Santa Fe Rail has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Railroad and purchased or otherwise acquired by Santa Fe Rail for use in or about the construction or operation of any of its Equipment on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. Santa Fe Rail further agrees to execute and deliver to the Railroad or the users of its Equipment all and every such further assurance as may be reasonably requested by the Railroad more fully to effectuate the assignment and delivery of every such claim, right and cause of action. Santa Fe Rail will give notice to the Railroad of any claim known to Santa Fe Rail from which liability may be charged against the Railroad hereunder and the Railroad will give notice to

Santa Fe Rail of any claim known to the Railroad from which liability may be charged against Santa Fe Rail hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, the satisfaction and discharge of this Agreement or the termination of this Agreement in any manner.

The Railroad, for the benefit of any assignee of Santa Fe Rail pursuant to the Assignment (or otherwise), for value received, hereby unconditionally guarantees to such assignee the due and punctual performance of all obligations of Santa Fe Rail under the Assignment (or any such other assignment) and under its warranty and patent indemnification set forth above.

(e) GE Warranty. GE warrants to the Railroad that each unit of Equipment manufactured by it hereunder will be free from defects in material, workmanship and title under normal use and service, and will be of the kind and quality designated or described in the Specifications referred to in Article 2 of this Agreement. The foregoing warranty is exclusive and in lieu of all other warranties, whether written, oral, implied or statutory (except as to title). NO WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR PURPOSE SHALL APPLY. If it appears within two years from the date of shipment by GE, or within 250,000 miles of operation, whichever event shall first occur, that any unit of the Equipment does not meet the warranties specified above, and the Railroad or its agent notifies GE promptly, GE, after verification as to condition and usage, shall correct any defect including nonconformance with the Specifications, at its option, either by repairing any defective part or parts made available to GE, or by making available at GE's plant or warehouse a repaired or replacement part. If requested by GE, the Railroad will ship the defective part or parts, with shipping charges prepaid, to the plant or warehouse designated by GE.

The liability of GE to the Railroad (except as to

title) arising out of the supplying of any unit of Equipment hereunder, or its use, whether on warranty, contract or negligence, shall not in any case exceed the cost of correcting defects in the Equipment as herein provided, and upon the expiration of the warranty period specified above, all such liability shall terminate. GE shall have no liability for any unit of Equipment or part thereof which becomes defective by reason of improper storage or application, misuse, negligence, accident or improper operation, maintenance, repairs or alterations on the part of the Railroad, or any third party other than GE. The foregoing shall constitute the sole remedy of the Railroad and the sole liability of GE.

It is understood that GE has the right to make any changes in design and add improvements to equipment at any time without incurring any obligations to install, at GE's expense, the same on other equipment sold by GE.

THERE ARE NO WARRANTIES WITH RESPECT TO MATERIAL AND WORKMANSHIP, EXPRESS OR IMPLIED, MADE BY GE EXCEPT THE WARRANTIES SET OUT ABOVE.

GE further agrees with the Railroad that neither the inspection as provided in Article 3 of this Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Railroad of any of its rights under this Item 2. In no event, whether as a result of breach of contract, warranty, tort (including negligence) or otherwise, shall GE or its suppliers be liable for any special, consequential, incidental or penal damages including, but not limited to, loss of profit or revenues, loss of use of the products or any associated equipment, damage to associated equipment, cost of capital, cost of substitute products, facilities, services or replacement power, downtime costs, or claims of the Railroad's customers for such damages. If the Railroad transfers title to or leases the products hereunder to any third party (other than as permitted by this Agreement), the Railroad shall obtain from such third party a provision affording

GE and its suppliers the protection of the preceding sentence.

In no event, whether as a result of breach of contract, warranty, tort (including negligence) or otherwise, shall GE's liability to the Railroad for any loss or damage arising out of, or resulting from this agreement, or from its performance or breach, or from the productions or services furnished hereunder, exceed the price of the specific product or service which gives rise to the claim. Except as to title any such liability shall terminate upon the expiration of the warranty period specified below. If GE furnishes the Railroad with advice or other assistance which concerns any product supplied hereunder or any system or equipment in which any such product may be installed and which is not required pursuant to this agreement, the furnishing of such advice or assistance will not subject GE to any liability, whether in contract, warranty, tort (including negligence) or otherwise.

The invalidity, in whole or in part, of any of the foregoing paragraphs will not affect the remainder of such paragraph or any other paragraph in this paragraph (e).

GE Patent Indemnification. Except in cases of designs specified by the Railroad and not developed or purported to be developed by GE, and articles and materials specified by the Railroad and not manufactured by GE, GE warrants that the Equipment furnished hereunder, and any part thereof, shall be delivered free of any rightful claim of any third party for infringement of any United States patent. If notified promptly in writing and given authority, information and assistance, GE shall defend, or may settle, at its expense, any suit or proceeding against the Railroad so far as based on a claimed infringement which would result in a breach of this warranty and GE shall pay all damages and costs awarded therein against the Railroad due to such breach. In case any equipment or part thereof is in such suit or proceeding found to constitute such an infringement and the use of such Equipment or

part thereof is enjoined, GE shall, at its expense and option, either procure for the Railroad the right to continue using said equipment or part thereof, or replace same within six months of such injunction with noninfringing Equipment or part thereof acceptable to the Railroad, or modify same so it becomes noninfringing, or remove the Equipment or part thereof and refund the Purchase Price (less reasonable depreciation for any period of use) and any transportation costs separately paid by the Railroad, but in each case without impairing the operational capability of such Equipment. (If the Purchase Price is so refunded, such refund shall be made to the assignee of GE's rights under this Agreement if this Agreement has been so assigned.) The preceding shall not apply to the use of any Equipment or part thereof furnished hereunder in conjunction with any other product in a combination not furnished by GE as a part of this transaction. As to any such combination, GE assumes no liability whatsoever for patent infringement and the Railroad will hold GE harmless against any infringement claims arising therefrom. GE will give notice to the Railroad of any claim known to GE from which liability may be charged against the Railroad hereunder and the Railroad will give notice to GE of any claim known to them from which liability may be charged against GE hereunder.

The foregoing states the entire liability of GE for patent infringement by the Equipment or any part thereof.

- Item 3: The Maximum Purchase Price referred to in Article 4 of this Agreement is \$60,000,000 plus the amount, if any, by which the Deposits of the institutional investors named in the Finance Agreement are increased pursuant to Paragraph 1 of the Finance Agreement.

SCHEDULE B

to

Conditional Sale Agreement

Builder	Type	Builder's Specifications	Builder's Plant	Quantity	Estimated Unit Base Price	Estimated Total Base Price	Road Numbers (Inclusive)	Estimated Time and Place of Delivery
General Motors Corporation (Electro-Motive Division)	2,300 h.p. Model GP-39-2 Diesel Electric Locomotives	EMD Specif. 8075 dated July 1977	La Grange, Illinois	10	\$650,000	\$ 6,500,000	3696 through 3705	April 1980; f.o.b. McCook, Illinois
PACCAR Inc	62' Insulated Box Cars AAR Mechanical Designation: XLI	PC-658 dated 8/1/79	Renton, Washington	54	79,630	4,300,020	AT-625378 through AT-625431	March 1980; Renton, Washington
PACCAR Inc	61' Insulated Box Cars AAR Mechanical Designation: XLI	PC-680 dated 3/26/79	Renton, Washington	300	72,000	21,600,000	AT-622800 through AT-623099	April-July 1980; Renton, Washington
Difco Inc.	77-ton, 50-cu. yd. Air Dump Gondola Cars AAR Mechanical Designation: MWD	Difco Drawing 8276-E dated 11/5/76	Findley, Ohio	30	60,000	1,800,000	AT-186230 through AT-186259	June-Aug., 1980; Findley, Ohio
Santa Fe Rail Equipment Co.	60' Plain Box Cars AAR Mechanical Designation: XF	AT&SF Ry. Specif. 2959	Topeka, Kansas	107	64,000	6,848,000	AT-612000 through AT-612106	Aug.-Dec., 1980; Topeka, Kansas
General Electric Company	3,000 h.p. Model C-30-7 Diesel Electric Locomotives	GE Specif. 3390G dated 1/15/79	Erie, Pennsylvania	24	791,667	19,000,000	8099 through 8122	May 1980; f.o.b. Builder's plant, Erie, Pennsylvania

\$60,048,020

CONDITIONAL SALE AGREEMENT

Dated as of March 1, 1980

Between Each of

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

and

PACCAR INC.,

and

DIFCO INC.,

and

SANTA FE RAIL EQUIPMENT CO.

and

GENERAL ELECTRIC COMPANY

and

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

12-1/4% Conditional Sale Indebtedness Due October 1, 1995

CONDITIONAL SALE AGREEMENT

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* This Table of Contents has been included in this document for convenience of reference only and does not form a part of or affect any construction or interpretation of this document.

CONDITIONAL SALE AGREEMENT dated as of March 1, 1980, between each of the corporations named in Item 1 of Schedule A hereto (collectively the "Builders" or severally a "Builder", or collectively or severally the "Vendor" as the context may require, all as more particularly set forth in Article 1 hereof), and THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Delaware corporation (the "Railroad").

WHEREAS the Builders severally have agreed to construct, sell and deliver to the Railroad, and the Railroad has agreed to purchase, the equipment described in Schedule B hereto (the "Equipment");

WHEREAS the Railroad and the Builders of such Equipment have entered into agreements (the "Interim Documents"), providing, among other things, for the purchase of such Equipment by the Railroad;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. Certain Definitions. The term "Vendor", whenever used in this Agreement, means, before any assignment of any of their rights hereunder, the respective corporations named in Item 1 of Schedule A hereto and any successor or successors for the time being to their manufacturing properties and businesses, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment. The parties hereto contemplate that this Agreement will be assigned to Harris Trust and Savings Bank, acting as agent under a Finance Agreement dated as of the date hereof (the "Finance Agreement"), pursuant to an Agreement and Assignment dated as of the date hereof (the "Assignment") between said Bank and each of the Builders. The term "Builder", whenever used in this Agreement, means, both before and after any such assignment, the respective corporations (as to the units of Equipment to be constructed or cause to be constructed by such corporation and

sold hereunder) named in Item 1 of Schedule A hereto and any successor or successors for the time being to their respective manufacturing properties and businesses.

The rights and obligations of the Builders under this Agreement are several in accordance with their interests and not joint. Accordingly, whenever this Agreement, by the use of such designation as "the Vendor", "such Builder" or other similar term, confers a right or imposes an obligation upon any corporation named in Item 1 of Schedule A hereto or its successor, such right or obligation shall be construed to accrue to or to be enforceable against only the specific corporation furnishing the units of Equipment giving rise to such right or obligation and its successors as herein provided.

The term "Officer's Certificate" as used in this Agreement shall mean a certificate signed by the President, any Vice President, the Controller, the Secretary, the Treasurer or any Assistant Treasurer of the Railroad, and the term "Request" shall mean a written request for the action therein specified, delivered to the Vendor, dated not more than 10 days prior to the date of delivery to the Vendor and signed on behalf of the Railroad by the President, a Vice President, the Treasurer, any Assistant Treasurer, the Secretary, the Controller or any Assistant Secretary of the Railroad.

ARTICLE 2. Construction and Sale. Pursuant to this Agreement, each Builder shall construct or cause to be constructed the units of the Equipment to be constructed by it as described in Schedule B hereto (such units of Equipment with respect to such Builder being hereinafter called "its Equipment") at its plant described in said Schedule B and will sell and deliver to the Railroad, and the Railroad will purchase from such Builder and accept delivery of and pay for such Equipment, each unit of which shall be constructed in accordance with the specifications referred to in Schedule B hereto and in accordance with such modifications thereof as may be agreed upon in writing between such Builder and the Railroad (which specifications and modifications, if any, are called the "Specifications"). The design, quality and component parts of each unit of the Equipment shall conform, on the date of completion of manufacture of each thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards recommended by the

Association of American Railroads reasonably interpreted as being applicable to equipment of the character of such units of the Equipment and each unit of the Equipment will be new railroad equipment first put into service on or after March 1, 1980.

ARTICLE 3. Inspection and Delivery. Each Builder will deliver the units of its Equipment to the Railroad at the place or places specified in Schedule B hereto (or if said Schedule B does not specify a place or places, at the place or places designated from time to time by the Railroad), freight charges, if any, prepaid and for the account of the Railroad, in accordance with the delivery schedule set forth in Schedule B hereto; provided, however, that no Builder shall have any obligation to deliver any unit of Equipment hereunder (i) at any time after the commencement of any proceedings specified in clause (c) or (d) of Article 16 hereof, (ii) if any event of default (as described in said Article 16), or event which with the lapse of time and/or demand would constitute such an event of default, shall have occurred and be continuing, or (iii) following receipt of written notice from the Assignee that there has been since ~~December 31, 1979~~, *September 30, 1979*, a material adverse change in the assets, liabilities, business or condition (financial or otherwise) of the Railroad and subsidiary companies until such time as such written notice may be canceled by a further written notice. AHH

Each Builder's obligation as to time of delivery is subject, however, to delays resulting from causes beyond such Builder's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

Notwithstanding the preceding provisions of this Article 3, any Equipment not delivered, accepted and settled for pursuant to Article 4 hereof on or before December 31, 1980 (the "Cut-Off Date"), shall be excluded herefrom. If any unit or units of Equipment shall be excluded from this Agreement pursuant to the preceding sentence, the Builder or Builders of such unit or units and the Railroad shall execute an agreement supplemental hereto limiting this Agreement to the units of Equipment not so

excluded herefrom. If a Builder's failure to deliver Equipment so excluded from this Agreement resulted from one or more of the causes set forth in the immediately preceding paragraph, the Railroad shall nevertheless be obligated to accept such Equipment and pay the full purchase price therefor, determined as provided in the applicable Interim Document.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Railroad and each Builder shall grant to such authorized inspectors reasonable access to its plant. Each Builder agrees to inspect all materials used in the construction of its Equipment in accordance with the standard quality control practices of such Builder. Upon completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the Railroad for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Railroad shall execute and deliver to such Builder a certificate of acceptance (the "Certificate of Acceptance") stating that such unit or units have been inspected and accepted on behalf of the Railroad and are marked in accordance with Article 7 hereof; provided, however, that such Builder shall not thereby be relieved of its warranty referred to in Article 14 hereof.

On delivery of each such unit hereunder at the place specified for delivery, the Railroad will assume the responsibility and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of such unit.

ARTICLE 4. Purchase Price and Payment. The base price or prices per unit of the Equipment are set forth in Schedule B hereto. Such base price or prices are subject to such increase or decrease as is agreed to by the Builder thereof and the Railroad. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased.

If the aggregate Purchase Price of Equipment under this Agreement shall exceed the Maximum Purchase Price (as defined in Item 3 of Schedule A hereto), the

Builder or Builders (and any assignee of the Builders) and the Railroad, unless waived by the Railroad, will enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for and specified by the Railroad, as will, after giving effect to such exclusion, reduce the aggregate Purchase Price of the Equipment under this Agreement to not more than the Maximum Purchase Price, and the Railroad agrees to purchase any such unit or units so excluded from this Agreement from the Builder thereof for cash on the date such unit or units would otherwise have been settled for under this Agreement either directly or, in case the Railroad shall arrange therefor, by means of a conditional sale, equipment trust or other appropriate method of financing as the Railroad shall determine and shall be reasonably acceptable to such Builder.

For the purpose of making settlement, the Equipment of each Builder shall be divided into such number of groups of units of the Equipment, delivered to and accepted by the Railroad (a "Group"), as such Builder and the Railroad may agree to. The term "Closing Date" with respect to any Group of the Equipment shall mean such date (on or after March 26, 1980, and on or prior to the Cut-Off Date), not more than 30 days following presentation by the Builder of the Equipment in such Group to the Railroad of the invoice and the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Railroad by written notice delivered to the Vendor at least 5 business days prior to the Closing Date designated therein; provided, however, that the aggregate of the Invoiced Purchase Prices (as hereinafter defined) of all Equipment settled for pursuant to this Agreement on any Closing Date shall not exceed (y) the amount then on deposit with the Assignee pursuant to the Finance Agreement under which the Assignee is acting as agent for the institutional investors therein named plus (z) the amount payable by the Railroad pursuant to subparagraph (a) of the next paragraph of this Article 4.

The Railroad hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment,

as follows:

(a) on the Closing Date for each Group the amount, if any, by which (x) the Purchase Price of all units of the Equipment for which settlement has theretofore or is then being made, as stated in the invoice or invoices presented in respect of such Closing Date (said invoiced prices being herein called the "Invoiced Purchase Prices"), exceeds (y) the sum of the Maximum Purchase Price and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to this subparagraph (a); and

(b) in 15 consecutive equal annual installments, as hereinafter provided, an amount equal to the aggregate of the Invoiced Purchase Prices for all the Equipment less the amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph (the aggregate of said installments being hereinafter called the "CSA Indebtedness").

In the event that on any Closing Date the final Purchase Price of any Group has not been finally determined, the invoice presented may be for an estimated Purchase Price (as evidenced by the words "Interim Invoice" written on the face of such invoice), subject to adjustment upon determination of the final Purchase Price, and a supplemental invoice may be presented by the appropriate Builder at least 10 business days prior to any subsequent Closing Date for settlement on such subsequent Closing Date for any increase in the Purchase Price; it being agreed by such Builder that the estimated Purchase Price in any Interim Invoice presented by it shall be calculated in such manner that in no event shall such estimated Purchase Price be in excess of the final Purchase Price of such Group. If a supplemental invoice is presented to the Railroad by the Builder at least 10 business days prior to any subsequent Closing Date with respect to any Group of Equipment, such supplemental invoice shall be settled for at such subsequent Closing Date. If a supplemental invoice is presented to the Railroad by a Builder after, or less than 10 business days prior to, the Closing Date when all units of the Equipment of the Builder shall have been delivered, accepted and settled for, but prior to the Repayment Date (as defined in Paragraph 4 of the Finance Agreement), the Railroad shall designate a Closing Date with respect to

such supplemental invoice. If a supplemental invoice is presented by a Builder after the Repayment Date, it shall be paid in cash by the Railroad to such Builder in accordance with the terms of the original purchase order given by the Railroad and accepted by such Builder in respect of its Equipment.

The installments of the CSA Indebtedness payable pursuant to subparagraph (b) of the preceding paragraph of this Article 4 shall be payable annually on October 1, in each year commencing on October 1, 1981, to and including October 1, 1995, or, if any such date is not a business day, on the next business day. The unpaid portion of the CSA Indebtedness shall bear interest from the respective Closing Dates on which such indebtedness was incurred at the rate of 12-1/4% per annum. All such interest shall be payable, to the extent accrued, on April 1 and October 1 in each year, commencing October 1, 1980, or, if any such date is not a business day, on the next business day.

All interest under this Agreement shall be calculated on the basis of a 360-day year of 12 30-day months.

The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in Chicago, Illinois, or New York, New York, are authorized or obligated to remain closed.

The Railroad will pay, to the extent legally enforceable, interest at the rate of 13-1/4% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

Except as provided in Article 8 hereof, the Railroad shall not have the privilege of prepaying any installment of its indebtedness hereunder prior to the date it becomes due.

In the event the Vendor, pursuant to Article 15

hereof, assigns the right to receive the payments herein provided to be made by the Railroad, the assignee thereof may request the Railroad to make and the Railroad shall make such payments to it at such address as shall be supplied to the Railroad by the assignee.

ARTICLE 5. Taxes. All payments to be made by the Railroad hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, Federal or foreign taxes (other than net income, gross receipts [except gross receipts taxes in the nature of or in lieu of sales or use taxes], excess profits and similar taxes) or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called "impositions"), all of which impositions the Railroad assumes and agrees to pay on demand. The Railroad will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its interest therein and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the security interest of the Vendor or result in a lien upon any part of the Equipment; provided, however, that the Railroad shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the interest or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any such impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Railroad shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; provided, however, that the Railroad shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Railroad shall have approved the payment thereof.

ARTICLE 6. Security Interest in the Equipment.

The Vendor shall and hereby does retain a security interest in the Equipment until the Railroad shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as provided in this Agreement. Any and all additions to the Equipment that are not readily removable without damage to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 8 hereof, when and only when the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, shall have been paid, and all the Railroad's obligations herein contained shall have been performed by the Railroad, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Vendor. However, the Vendor, upon receipt of a Request at that time, will (a) execute a bill or bills of sale for the Equipment transferring and releasing its interest therein to the Railroad, or upon its order, free of all claims, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Railroad, (b) execute and deliver, for filing in all necessary public offices, such instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the release of the security interest of the Vendor in the Equipment and (c) pay to the Railroad any money paid to the Vendor pursuant to Article 8 hereof and not theretofore applied as therein provided. The Railroad hereby waives any and all rights in or to the payment of any penalty or damages for failure to execute and deliver such bill or bills of sale or instruments, except for failure to execute and deliver the same within a reasonable time after receipt of a Request.

ARTICLE 7. Marking of the Equipment. The Railroad will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in Schedule B hereto, or in the case of Equipment not there

listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the words "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION" or other appropriate markings approved by the Vendor with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's interest in the Equipment and its rights under this Agreement. The Railroad will not place any such unit in operation or exercise any control or dominion over the same until such markings have been made thereon and will replace promptly any such markings which may be removed, defaced, obliterated or destroyed. The Railroad will not change the number of any unit of the Equipment except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor by the Railroad and filed, recorded and deposited by the Railroad in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Railroad will not allow the name of any person, firm, association or corporation to be placed on any of the Equipment as a designation which might be interpreted as a claim of ownership thereof by the Railroad or by any person, firm, association or corporation other than the Vendor; provided, however, that the Railroad may cause the Equipment to be lettered with the names or initials or other insignia of the Railroad or its affiliates.

ARTICLE 8. Casualty Occurrences; Insurance. In the event that any unit of the Equipment shall be worn out, lost, stolen, destroyed, irreparably damaged or otherwise rendered permanently unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise or the Purchase Price (or any portion thereof) of any unit shall have been refunded by a Builder pursuant to such Builder's patent indemnities therefor as set forth in Item 2 of Schedule A hereto (such occurrences being hereinafter called "Casualty Occurrences"), the Railroad shall promptly and fully inform the Vendor in regard thereto (after it has knowledge of such Casualty Occurrence). When the aggregate Casualty Value (as defined

herein) of all units having suffered a Casualty Occurrence (exclusive of units having suffered a Casualty Occurrence with respect to which a payment shall have been made to the Vendor pursuant to this Article 8) hereunder shall exceed \$250,000 (or such lesser amount as the Railroad may elect), the Railroad shall promptly pay to the Vendor a sum equal to the aggregate Casualty Value of such units of the Equipment as of the date of such payment and shall file with the Vendor an Officer's Certificate setting forth the Casualty Value of each unit of the Equipment suffering a Casualty Occurrence.

So long as no event of default shall have occurred and be continuing, any money paid to the Vendor pursuant to the preceding paragraph of this Article 8 shall be used, as the Railroad shall from time to time direct in a Request, in whole or in part, to prepay installments of CSA Indebtedness or toward the cost of a unit or units of new standard-gauge railroad equipment (other than passenger or work equipment) to replace units suffering a Casualty Occurrence; provided, however, that, if the amount (excluding amounts referred to in the immediately following proviso) paid to the Vendor pursuant to the preceding paragraph of this Article 8 and not theretofore applied toward the cost of replacement units exceeds \$4,000,000 at the due date of an annual installment of the CSA Indebtedness, such excess shall be applied on such date to prepay installments of the CSA Indebtedness; provided further, however, that the Railroad shall direct that any money paid to the Vendor in respect of Equipment which shall be worn out be applied only toward the cost of replacement units and not to prepay any installment of the CSA Indebtedness; provided further, however, that no caboose shall be included as a replacement unit if the Purchase Price thereof (together with the Purchase Price of all other cabooses constituting replacement units and included as Equipment hereunder) shall exceed 3% of the outstanding CSA Indebtedness at the date of such Request. In case any money is applied pursuant to this Article 8 to prepay indebtedness, it shall be accompanied by accrued interest on the amount prepaid and shall be so applied to reduce each installment of CSA Indebtedness thereafter falling due pro rata.

The "Casualty Value" of each unit of the Equipment (other than a replacement unit) shall be deemed to be that amount which bears the same ratio to the original Purchase Price thereof (less, in the event the Railroad

shall have made any payments under the provisions of subparagraph (a) of the third paragraph of Article 4 hereof, an amount which bears the same ratio to the aggregate of all such payments as the original Purchase Price of such unit bears to the original aggregate Purchase Price of all the Equipment) as the unpaid CSA Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) as of the date payment is made with respect to such Casualty Occurrence bears to the original CSA Indebtedness. The Casualty Value of each replacement unit shall be deemed to be that amount which bears the same ratio to the portion of the cost thereof paid by the Vendor as the unpaid CSA Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) as of the date payment is made with respect to such Casualty Occurrence bears to the unpaid CSA Indebtedness (without giving effect to any such prepayments) as of the date of acquisition by the Vendor of such replacement unit.

The Railroad will cause any replacement unit or units to be marked as provided in Article 7 hereof. Any and all such replacements units shall constitute accessions to the Equipment and shall be subject to all appropriate terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement; provided, however, that nothing herein shall result in any Builder having any liability or obligation pursuant to this Agreement with respect to any replacement unit or units not manufactured by it. Title to all such replacement units shall be free and clear of all liens and encumbrances except the liens permitted by the second paragraph of Article 12 hereof and shall be taken initially and shall remain in the name of the Vendor subject to the provisions hereof, and the Railroad shall execute, acknowledge, deliver, file, record or deposit all such documents (including the filing of a supplement to this Agreement with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303) and do any and all such acts as may be necessary to cause such replacement units to come under and be subject to this Agreement. All such replacement units shall be guaranteed and warranted in like manner as is customary at the time for similar equipment.

Whenever the Railroad shall deliver a Request to apply amounts toward the cost of any replacement unit or

units, the Railroad shall also deliver therewith bills of sale, invoices and certificates of acceptance, substantially in the form provided by the Assignment, together with an opinion of counsel for the Railroad that the Vendor has a valid and perfected security interest in each such replacement unit, free and clear from all claims, liens, security interests and other encumbrances except the rights of the Railroad under this Agreement, that each such unit has come under and become subject to this Agreement and that an appropriate supplement to this Agreement has been executed and filed with the Interstate Commerce Commission as required by the next preceding paragraph hereof.

In order to facilitate the sale or other disposition of any Equipment suffering a Casualty Occurrence, the Vendor shall, upon Request, after payment by the Railroad of a sum equal to the Casualty Value of such Equipment, execute and deliver to the Railroad or the Railroad's assignee or nominee, a bill of sale (without warranties) for such Equipment, and such other documents as may be required to release such Equipment from the terms and scope of this Agreement, in such form as may be reasonably requested by the Railroad.

So long as no event of default shall have occurred and be continuing, any money paid to the Vendor pursuant to this Article 8 shall, if the Railroad shall direct, be invested, pending its application as hereinabove provided, in such of the following as may be specified by the Railroad: (i) direct obligations of the United States of America or obligations for which the full faith and credit of the United States is pledged to provide for the payment of principal and interest, (ii) open market commercial paper rated A-1 or A-2 by Standard & Poor's Corporation or prime-1 or prime-2 by NCO/Moody's Commercial Paper Division of Moody's Investors Service, Inc., or the successor of either of them, or (iii) certificates of deposit of domestic commercial banks in the United States of America having total capital and surplus in excess of \$100,000,000, in each case maturing in not more than one year from the date of such investment (such investments being herein called "Investments"). Any such Investments shall from time to time be sold and the proceeds reinvested in such Investments as the Railroad may in a Request direct. Any interest received by the Vendor on any Investments shall be held by the Vendor and applied as hereinafter provided. Upon any sale or the maturity of any Invest-

ments, the proceeds thereof, plus any interest received by the Vendor thereon, up to the cost (including accrued interest) thereof, shall be held by the Vendor for application pursuant to this Article 8, and any excess shall be paid to the Railroad. If such proceeds (plus such interest) shall be less than such cost, the Railroad will promptly pay to the Vendor an amount equal to such deficiency. The Railroad will pay all expenses incurred by the Vendor in connection with the purchase and sale of Investments.

If any unit of the Equipment is removed for repairs other than running repairs or becomes unsuitable or not necessary for continued use by the Railroad in its business or operations, such occurrence shall, upon the election of the Railroad evidenced by a Request, constitute a Casualty Occurrence subject to the provisions of this Article 8; provided, however, that the Railroad shall direct any money paid to the Vendor in respect thereof to be applied only toward the cost of replacement units and not to prepay any installment of CSA Indebtedness.

Notwithstanding anything to the contrary contained in this Article 8, if one or more events of default shall have occurred and be continuing, all money held by the Vendor pursuant to this Article 8 (including, for this purpose, Investments) shall be applied by the Vendor as if such money were money received upon the sale of Equipment pursuant to Article 17 hereof.

The Railroad will at all times, at its own expense, cause to be carried and maintained property and casualty insurance in respect of the Equipment, and public liability insurance, in amounts and against risks customarily insured against (taking into account self-insurance) by the Railroad in respect of similar equipment owned by it.

ARTICLE 9. Maintenance; Compliance with Laws and Rules. The Railroad agrees that, at its own cost and expense, it will maintain and keep the Equipment in good operating order, repair and condition, ordinary wear and tear excepted, and eligible (in the case of Equipment other than locomotives) for railroad interchange in accordance with the interchange rules of the Association of American Railroads or other applicable regulatory body.

During the term of this Agreement, the Railroad will at all times comply in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all laws of the jurisdictions in which its operations involving the Equipment may extend, with the Interchange Rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration or replacement of or addition to any part on any unit of the Equipment, the Railroad will conform therewith, at its own expense; provided, however, that the Railroad may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor (if the Vendor shall at any time so advise the Railroad), adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 10. Reports and Inspections. On or before April 1 in each year, commencing with the year 1981, the Railroad shall furnish to the Vendor an Officer's Certificate (a) setting forth as at the preceding December 31 the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding 12 months (or since the date of this Agreement in the case of the first such statement) or that have been withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 7 hereof have been preserved or replaced. The Vendor shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

ARTICLE 11. Possession and Use. The Railroad, so long as an event of default shall not have occurred and be continuing hereunder, shall be entitled, from and after delivery of units of the Equipment by the Builder thereof to the Railroad, to the possession of such units of Equip-

ment and the use thereof upon the lines of railroad owned or operated by it either alone or jointly with others and whether under lease or otherwise, or upon the lines of railroad owned or operated by any railroad company controlled by, or under common control with, the Railroad, or over which it has trackage rights, or upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, and may enter into a written lease of one or more units of the Equipment for a term not exceeding six months with any affiliate or any other solvent railroad company incorporated in the United States of America (or any state thereof or the District of Columbia), but only upon and subject to all the terms and conditions of this Agreement; provided, however, that any such lease permitted hereunder shall state expressly that the rights of the lessee thereunder are subject and subordinate to the rights and remedies of the Vendor under this Agreement; and, provided, further, however, that neither the Railroad nor any such lessee shall be entitled to assign the Equipment for use or service outside of the United States of America except in normal interchange.

Any such lease may provide that the lessee, so long as it shall not be in default under such lease, shall be entitled to the possession of the Equipment included in such lease and the use thereof subject to the rights and remedies of the Vendor in respect of the Equipment covered by such lease upon the occurrence of an event of default hereunder; and, subject to the provisions of Article 7 hereof, may provide for lettering or marking upon such Equipment for convenience of identification of the leasehold interest of such lessee therein. A copy of the form of each lease (and of each amendment thereto, if any) shall promptly be filed with the Vendor.

ARTICLE 12. Prohibition Against Liens. The Railroad will pay or discharge any and all sums claimed by any party from, through or under the Railroad or its successors or assigns which, if unpaid, might become a lien, charge or security interest on or in the Equipment, or any unit thereof, equal or superior to the Vendor's interest therein; provided, however, that the Railroad shall be under no obligation to pay or discharge any such claim so long as it is contesting in good faith and by appropriate legal proceedings such claim and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor in or to the

Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

ARTICLE 13. Railroad's Indemnities. The Railroad will indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of retention by the Vendor of a security interest in the Equipment, the use and operation thereof by the Railroad during the period when said security interest remains in the Vendor or the transfer of said security interest in the Equipment by the Vendor pursuant to any of the provisions of this Agreement.

ARTICLE 14. Patent Indemnities; Builder's Warranty of Material and Workmanship. Each Builder's indemnities with respect to patent infringement, its warranty of material and workmanship and the limitations of its liability with regard thereto and certain agreements of the Railroad are set forth in Item 2 of Schedule A hereto.

ARTICLE 15. Assignments. The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Vendor. A sale, assignment, transfer or disposition to a solvent, Class 1 railroad company organized under the laws of the United States of America or any of the states thereof which shall acquire all or substantially all the lines of railroad of the Railroad, and which, by execution of an appropriate instrument satisfactory to the Vendor, shall assume and agree to perform each of, and all, the obligations and covenants of the Railroad under this Agreement, shall not be deemed a breach of this covenant and thereupon, the successor railroad company shall be for all

purposes the "Railroad" hereunder.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Railroad, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve any Builder from, any of the obligations of such Builder to construct and deliver the Equipment in accordance with this Agreement or to respond to its warranties and indemnities contained or referred to in Article 14 hereof and Schedule A hereto, or relieve the Railroad of any of its obligations to such Builder under Articles 2, 3, 4, 5, 13 and 14 hereof, Schedule A hereto and this Article 15 or of any other obligation which, according to its terms or context, is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to the Railroad, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall by virtue of such assignment acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Railroad of the notification of any such assignment, all payments thereafter to be made by the Railroad under this Agreement to the Vendor shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

The Railroad recognizes that it is the custom of railroad equipment manufacturers to assign conditional sale agreements and understands that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Railroad represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder and for the purpose of inducing such acquisition, that, in the event of such assignment, the rights of such assignee to the entire unpaid indebtedness in respect of the Purchase Price or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense,

setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of any Builder with respect to its Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by a Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against the respective Builders.

The Railroad will (a) in connection with each settlement for the Equipment subsequent to such assignment, deliver to the assignee, at least five business days prior to the Closing Date for the Group fixed in the notice by the Railroad, all documents required by the terms of such assignment to be delivered to such assignee in connection with such settlement, in such number of counterparts or copies as may reasonably be requested, except for any opinion of counsel for such assignee, and (b) furnish to such assignee such number of counterparts of any other certificate or document required by the Vendor as may reasonably be requested.

If this Agreement shall have been assigned by the Builders and the assignee shall not make payment to a Builder with respect to units of the Equipment of such Builder as provided in the instrument making such assignment, such Builder will promptly notify the Railroad of such event and, if such amount shall not have been previously paid by such assignee, the Railroad will, not later than 60 days after the date such payment was due, pay the full purchase price therefor, determined as provided in this Agreement (together with interest from the day such payment was due to the date of payment by the Railroad at the highest prime rate of interest charged by any of the four New York City banks having the largest total assets in effect on the date such payment was due), such payment to be made in cash after the delivery of such Equipment, either directly, or, in case the Railroad shall arrange therefor, by means of a conditional sale agreement, equipment trust or such other appropriate method of financing as the Railroad shall determine and as shall be reasonably acceptable to such Builder.

ARTICLE 16. Defaults. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) the Railroad shall fail to pay in full any indebtedness in respect of the Purchase Price of the Equipment as provided in this Agreement or shall fail to pay in full any other sum payable by the Railroad as provided in this Agreement within five days after the same shall have become due and payable; or

(b) the Railroad shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Equipment on its part to be kept or performed or to make provision satisfactory to the Vendor for such compliance; or

(c) a petition for reorganization under Title 11 of the United States Code, as now constituted or hereafter amended, shall be filed by or against the Railroad and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been and shall not continue to be duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees, within 60 days after such petition shall have been filed and otherwise in accordance with the provisions of 11 U.S.C. § 1168, and successor provision, as the same may be hereafter amended; or

(d) any other proceedings shall be commenced by or against the Railroad for any relief which includes, or might result in, any modification of the obligation of the Railroad hereunder under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffec-

tiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been and shall not continue to be duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Railroad or for its property in connection with any such proceedings in such manner that such obligations have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have been commenced; or

(e) the Railroad shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Railroad and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Vendor, declare (hereinafter called a "Declaration of Default") the entire indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. The Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Railroad wherever situated. The Railroad shall promptly notify the Vendor in writing of any event which has come to its attention which constitutes, or which with the giving of notice and/or lapse of time could constitute, an event of default hereunder and of what action, if any, the Railroad has taken or proposes to take to remedy such event of default or event.

The Vendor may at its election waive any such event of default and its consequences and rescind and annul any Declaration of Default by notice to the Railroad in

writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default had been made. Notwithstanding the provisions of this paragraph, it is agreed by the Railroad that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 17. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may, subject to compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken by its agent or agents immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Railroad or any other person and for such purpose may enter upon the Railroad's premises or any other premises where the Equipment may be located (without judicial process if this can be done without breach of the peace) and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Railroad.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall reasonably designate a point or points upon the premises of the Railroad for the delivery of the Equipment to the Vendor, the Railroad shall, at its own expense, forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any part of the Equipment has been interchanged or leased to return the Equipment so interchanged or leased), cause (a) the Equipment to be moved to such point or points on its lines as shall be designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor and (b) the Equipment to be moved to such interchange point or points of the Railroad as shall be designated by the Vendor upon any sale, lease or other disposal of all or any part of the Equipment by the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines or premises of the Railroad

until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish, without charge for rent, storage or insurance (which the Railroad agrees to maintain as herein provided), the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Railroad, to provide proper maintenance for the Equipment during such storage and to permit inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Railroad requiring specific performance hereof. The Railroad hereby waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 17 provided) may at its election and upon such notice as is hereinafter set forth retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Railroad by telegram or registered mail, addressed as provided in Article 21 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Railroad's rights in the Equipment shall thereupon terminate and all payments made by the Railroad may be retained by the Vendor as compensation for the use of the Equipment by the Railroad; provided, however, that if the Railroad, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor

in retaking possession of, removing and storing the Equipment and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad; provided, further, that if the Railroad or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Railroad and to any other persons to whom the law may require notice of the time and place, may sell the Equipment, or any unit thereof, free from any and all claims of the Railroad or any other party claiming from, through or under the Railroad, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Railroad should tender full payment of the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad. The proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at

such place or places and at such time or times as the Vendor may specify, in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine. The Vendor or the Railroad may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Railroad shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed to the Railroad as provided in Article 21 hereof. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 offerees have been solicited in writing to submit bids), it shall be subject to the right of the Railroad to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Railroad (except to the extent of surplus money received as hereinafter provided in this Article 17), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of the sums due to the Vendor from the Railroad hereunder. From and after the date of any such sale, the Railroad shall pay to the Vendor the per diem interchange for each unit of Equipment which shall not have been assembled, as hereinabove provided, by the date of such sale for each day from the date of such sale to the date of delivery to the purchaser at such sale.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly

granted to the Railroad shall not otherwise alter or affect the Vendor's rights or the Railroad's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Railroad's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Railroad shall pay the amount of such deficiency to the Vendor upon demand, together with interest from the date of such demand to the date of payment by the Railroad at the rate per annum set forth in Article 4 hereof applicable to amounts remaining unpaid after becoming due and payable. If the Railroad shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Railroad.

The Railroad will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including attorneys' fees, if any, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 18. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Railroad to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Railroad, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment or any unit thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 19. Recording. The Railroad will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303; and the Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit, record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its interest in the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement.

The Railroad will promptly furnish to the Vendor evidence of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Railroad with respect thereto satisfactory to the Vendor.

ARTICLE 20. Payment of Expenses. The Railroad will pay all reasonable costs and expenses (other than the fees and expenses of counsel for the Builders) incident to this Agreement and the first assignment of this Agreement (including the fees and expenses of an agent, if the first assignee is an agent), and any instrument supplemental or related hereto or thereto, including all fees and expenses of Messrs. Cravath, Swaine & Moore, special counsel for the first assignee of this Agreement and for any party acquiring interests in such first assignment, and all reasonable costs and expenses in connection with the transfer by any party of interests acquired in such first assignment, but excluding all fees and expenses of any other counsel for such parties.

ARTICLE 21. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at its chief

place of business at the following specified addresses:

(a) to the Railroad, at 80 East Jackson Boulevard, Chicago, Illinois 60604, Attention of Vice President-Finance,

(b) to a Builder, at its address specified in Item 1 of Schedule A hereto, and

(c) to any assignee of the Vendor or of the Railroad, at such address as may have been furnished in writing to each of the other parties hereto by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 22. Article Headings; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including the Schedules hereto, exclusively states the rights of the Vendor and the Railroad with respect to the Equipment and supersedes all other agreements, oral or written (including the Interim Documents), with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Vendor and the Railroad.

ARTICLE 23. Law Governing. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred pursuant to 49 U.S.C. § 11303, and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the marking of the units of Equipment provided for in Article 7 hereof.

ARTICLE 24. Execution. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. It shall not be necessary that any counterpart be signed by all the parties so long as the Railroad and each Builder has executed and delivered a counterpart to the other, whereupon this Agreement shall become effective with respect to the Railroad and such Builder. Each Builder shall be bound hereunder notwithstanding the failure of any other Builder to execute and deliver this Agreement or to perform its obligations hereunder. Although this Agreement is dated, for convenience, as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by their officers or other persons, thereunto duly authorized, and their respective corporate seals to be hereunto affixed, duly attested, all as of the date first above written.

THE ATCHISON, TOPEKA AND
SANTA FE RAILWAY COMPANY,

[Corporate Seal]

by

Vice President

Attest:

Assistant Secretary

[Corporate Seal]

Attest:

J. H. Scott
Assistant Secretary

GENERAL MOTORS CORPORATION,
(Electro-Motive Division),

by

P. K. Haglund
Vice President

[Corporate Seal]

Attest:

Secretary

PACCAR INC.,

by

Vice President

[Corporate Seal]

Attest:

Secretary

DIFCO INC.,

by

Vice President

[Corporate Seal]

Attest:

Secretary

SANTA FE RAIL EQUIPMENT CO.,

by

President

GENERAL ELECTRIC COMPANY,

[Corporate Seal]

by _____

Attest:

Attesting Secretary

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this day of March 1980, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this 24th day of March 1980, before me personally appeared P. K. HOGLUND, to me personally known, who, being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (Electro-Motive Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

J. K. Parecki
Notary Public

My Commission Expires September 18, 1983

[Notarial Seal]

STATE OF WASHINGTON,)
) ss.:
COUNTY OF KING,)

On this day of March 1980, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of PACCAR INC, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

STATE OF OHIO,)
) ss.:
COUNTY OF HANCOCK,)

On this day of March 1980, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of DIFCO INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this day of March 1980, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is the President of SANTA FE RAIL EQUIPMENT CO., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

COMMONWEALTH OF PENNSYLVANIA,)
) ss.:
COUNTY OF EIRE,)

On this day of March 1980, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is of GENERAL ELECTRIC COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

SCHEDULE A

to

Conditional Sale Agreement

- Item 1. (a) General Motors Corporation (Electro-Motive Division), a Delaware corporation, La Grange, Illinois 60525.
- (b) PACCAR Inc, a Delaware corporation, 1400 North 4th Street, Renton, Washington 98055, with a copy to General Counsel, PACCAR Inc, P. O. Box 1518, Bellevue, Washington 98009.
- (c) Difco Inc., an Ohio corporation, Differential Avenue, Findlay, Ohio 45840.
- (d) Santa Fe Rail Equipment Co., a Delaware corporation, 109 West Ninth Street, Topeka, Kansas 66628.
- (e) General Electric Company, a New York corporation, 2901 East Lake Road, Erie, Pennsylvania 16531.
- Item 2. (a) GM Warranty. General Motors Corporation ("GM") warrants that the Equipment manufactured by it hereunder is of the kind and quality described in, and will be built in accordance with, the Specifications referred to in Article 2 of this Agreement and is suitable for the ordinary purposes for which such Equipment is used and warrants each unit of such Equipment to be free from defects in material and workmanship which may develop under normal use and service within two years from date of delivery of such unit or before such unit has been operated 250,000 miles, whichever event shall first occur. GM agrees to correct such defects, which examination shall disclose to GM's satisfaction to be defective, by repair or replacement F.O.B. factory and such correction shall constitute fulfillment of GM's obligation with respect to such defect under this warranty. GM warrants specialties not of its own specification or design to the same extent that

the suppliers of such specialties warrant such items to GM. GM further agrees with the Railroad that neither the inspection as provided in Article 3 of this Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or modification by the Railroad of any of its rights under this Item 2(a).

THERE ARE NO WARRANTIES WITH RESPECT TO MATERIAL AND WORKMANSHIP, EXPRESSED OR IMPLIED, MADE BY GM EXCEPT THE WARRANTIES SET OUT ABOVE.

GM Patent Indemnification. GM shall defend any suit or proceeding brought against the Railroad and/or each assignee of GM's rights under this Agreement so far as the same is based on a claim that the Equipment of GM's specification, or any part thereof, furnished under this Agreement constitutes an infringement of any patent, if notified promptly in writing and given authority, information and assistance (at GM's expense) for the defense of same, and GM shall pay all damages and costs awarded therein against the Railroad or any such assignee.

In case any unit of such Equipment, or any part thereof, is in such suit held to constitute infringement and the use of such unit or part is enjoined, GM shall at its option and at its own expense either procure for the Railroad and any such assignee the right to continue using such unit or part, or replace the same with noninfringing equipment subject to this Agreement, or modify it so it becomes noninfringing, or remove such unit and refund the Purchase Price and the transportation and installations costs thereof. If the Purchase Price is so refunded, such refund shall be made to the assignee of GM's rights under this Agreement if this Agreement has been so assigned. GM will assume no liability for patent infringement by reason of purchase, manufacture, sale or use of devices not included in and covered by its specification. The foregoing states the entire liability of GM for patent infringement by the Equipment or any part thereof.

(b) PACCAR Warranty. PACCAR Inc ("PACCAR") warrants that its Equipment will be built in accordance with the requirements, specifications and standards set forth or referred to in Article 2 of this Agreement and, except in cases of articles and materials specified by the Railroad and not manufactured by PACCAR, warrants its Equipment to be free from defects in material and workmanship under normal use and service, the liability of PACCAR under this warranty being limited, as the Railroad may elect: (i) to repair the defects at PACCAR's plant; or (ii) to replacement of a defective part; or (iii) to the cost of repair or replacement according to the AAR Code of Rules Governing Condition of and Repairs to Freight and Passenger Cars with Interchange of Traffic. PACCAR shall be given reasonable opportunity to verify any claim of defects in workmanship or materials.

The foregoing warranty of PACCAR shall begin at the time of delivery of a unit of its Equipment to the Railroad and terminate two years after such delivery. PACCAR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. The Railroad's rights under the foregoing warranty shall be its sole and exclusive remedy and PACCAR will have no liability for lost profit or for indirect, incidental, consequential or commercial losses. This warranty is expressly in lieu of all other warranties expressed or implied on the part of PACCAR, except for the patent indemnification included in this Item 2(b), and PACCAR neither assumes nor authorizes any person to assume for it any other warranty liability in connection with the construction and delivery of its Equipment, except as aforesaid.

PACCAR further agrees with the Railroad that neither the inspection as provided in Article 3 of this Agreement, nor any examination, nor the acceptance of any units of its Equipment as provided in said Article 3 shall be deemed a waiver or modification by the Railroad of any of its rights under this Item 2(b).

PACCAR Patent Indemnification. Except in cases

of articles or materials specified by the Railroad and not manufactured by PACCAR and in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed by PACCAR, PACCAR agrees to indemnify, protect and hold harmless the Railroad from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Railroad, its assigns or the users of its Equipment because of the use in or about the construction or operation of any of its equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Railroad likewise will indemnify, protect and hold harmless the Vendor from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor because of the use in or about the construction or operation of any of its Equipment of any article or material specified by the Railroad and not manufactured by PACCAR or of any design, system, process, formula or combination specified by the Railroad and not developed or purported to be developed by PACCAR which infringes or is claimed to infringe on any patent or other right. PACCAR agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Railroad every claim, right and cause of action which PACCAR has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Railroad and purchased or otherwise acquired by PACCAR for use in or about the construction or operation of any of its Equipment on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. PACCAR further agrees to execute and deliver to the Railroad or the users of its Equipment all and every such further assurance as may be reasonably requested by the

Railroad more fully to effectuate the assignment and delivery of every such claim, right and cause of action. PACCAR will give notice to the Railroad of any claim known to PACCAR from which liability may be charged against the Railroad hereunder and the Railroad will give notice to PACCAR of any claim known to the Railroad from which liability may be charged against PACCAR hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, the satisfaction and discharge of this Agreement or the termination of this Agreement in any manner.

(c) Difco Warranty. Difco Inc. ("Difco") warrants that its Equipment will be built in accordance with the requirements, specifications and standards set forth or referred to in Article 2 of this Agreement and, except in cases of articles and materials specified by the Railroad and not manufactured by Difco, warrants its Equipment to be free from defects in material and workmanship under normal use and service, the liability of Difco under this warranty being limited, as the Railroad may elect: (i) to repair the defects at Difco's plant; or (ii) to replacement of a defective part; or (iii) to the cost of repair or replacement according to the AAR Code of Rules Governing Condition of and Repairs to Freight and Passenger Cars with Interchange of Traffic. Difco shall be given reasonable opportunity to verify any claim of defects in workmanship or materials.

The foregoing warranty of Difco shall begin at the time of delivery of a unit of its Equipment to the Railroad and terminate two years after such delivery. DIFCO MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. The Railroad's rights under the foregoing warranty shall be its sole and exclusive remedy and Difco will have no liability for lost profit or for indirect, incidental, consequential or commercial losses. This warranty is expressly in lieu of all other warranties expressed or implied on the part of Difco, except for the patent indemnification included in this Item 2(c), and Difco

neither assumes nor authorizes any person to assume for it any other warranty liability in connection with the construction and delivery of its Equipment, except as aforesaid.

Difco further agrees with the Railroad that neither the inspection as provided in Article 3 of this Agreement, nor any examination, nor the acceptance of any units of its Equipment as provided in said Article 3 shall be deemed a waiver or modification by the Railroad of any of its rights under this Item 2(c).

Difco Patent Indemnification. Except in cases of articles or materials specified by the Railroad and not manufactured by Difco and in the case of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed by Difco, Difco agrees to indemnify, protect and hold harmless the Railroad from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Railroad, its assigns or the users of its Equipment because of the use in or about the construction or operation of any of its equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Railroad likewise will indemnify, protect and hold harmless the Vendor from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor because of the use in or about the construction or operation of any of its Equipment of any article or material specified by the Railroad and not manufactured by Difco or of any design, system, process, formula or combination specified by the Railroad and not developed or purported to be developed by Difco which infringes or is claimed to infringe on any patent or other right. Difco agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Railroad every

claim, right and cause of action which Difco has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Railroad and purchased or otherwise acquired by Difco for use in or about the construction or operation of any of its Equipment on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. Difco further agrees to execute and deliver to the Railroad or the users of its Equipment all and every such further assurance as may be reasonably requested by the Railroad more fully to effectuate the assignment and delivery of every such claim, right and cause of action. Difco will give notice to the Railroad of any claim known to Difco from which liability may be charged against the Railroad hereunder and the Railroad will give notice to Difco of any claim known to the Railroad from which liability may be charged against Difco hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, the satisfaction and discharge of this Agreement or the termination of this Agreement in any manner.

The Railroad, for the benefit of any assignee of Difco pursuant to the Assignment (or otherwise), for value received, hereby unconditionally guarantees to such assignee the due and punctual performance of all obligations of Difco under the Assignment (or any such other assignment) and under its warranty and patent indemnification set forth above.

(d) Santa Fe Warranty. Santa Fe Rail Equipment Co. ("Santa Fe Rail") warrants that its Equipment will be built in accordance with the requirements, specifications and standards set forth or referred to in Article 2 of this Agreement and, except in cases of articles and materials specified by the Railroad and not manufactured by Santa Fe Rail, warrants its Equipment to be free from defects in material and workmanship under normal use and

service, the liability of Santa Fe Rail under this warranty being limited, as the Railroad may elect: (i) to repair the defects at Santa Fe Rail's plant; or (ii) to replacement of a defective part; or (iii) to the cost of repair or replacement according to the AAR Code of Rules Governing Condition of and Repairs to Freight and Passenger Cars with Interchange of Traffic. Santa Fe Rail shall be given reasonable opportunity to verify any claim of defects in workmanship or materials.

The foregoing warranty of Santa Fe Rail shall begin at the time of delivery of a unit of its Equipment to the Railroad and terminate two years after such delivery. SANTA FE RAIL MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. The Railroad's rights under the foregoing warranty shall be its sole and exclusive remedy and Santa Fe Rail will have no liability for lost profit or for indirect, incidental, consequential or commercial losses. This warranty is expressly in lieu of all other warranties expressed or implied on the part of Santa Fe Rail, except for the patent indemnification included in this Item 2(d), and Santa Fe Rail neither assumes nor authorizes any person to assume for it any other warranty liability in connection with the construction and delivery of its Equipment, except as aforesaid.

Santa Fe Rail further agrees with the Railroad that neither the inspection as provided in Article 3 of this Agreement, nor any examination, nor the acceptance of any units of its Equipment as provided in said Article 3 shall be deemed a waiver or modification by the Railroad of any of its rights under this Item 2(d).

Santa Fe Rail Patent Indemnification. Except in cases of articles or materials specified by the Railroad and not manufactured by Santa Fe Rail and in the cases of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed by Santa Fe Rail, Santa Fe Rail agrees to indemnify, protect and hold harmless the Railroad from and against any and all liability, claims, costs,

charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Railroad, its assigns or the users of its Equipment because of the use in or about the construction or operation of any of its equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Railroad likewise will indemnify, protect and hold harmless the Vendor from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor because of the use in or about the construction or operation of any of its Equipment of any article or material specified by the Railroad and not manufactured by Santa Fe Rail or of any design, system, process, formula or combination specified by the Railroad and not developed or purported to be developed by Santa Fe Rail which infringes or is claimed to infringe on any patent or other right. Santa Fe Rail agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Railroad every claim, right and cause of action which Santa Fe Rail has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Railroad and purchased or otherwise acquired by Santa Fe Rail for use in or about the construction or operation of any of its Equipment on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. Santa Fe Rail further agrees to execute and deliver to the Railroad or the users of its Equipment all and every such further assurance as may be reasonably requested by the Railroad more fully to effectuate the assignment and delivery of every such claim, right and cause of action. Santa Fe Rail will give notice to the Railroad of any claim known to Santa Fe Rail from which liability may be charged against the Railroad hereunder and the Railroad will give notice to

Santa Fe Rail of any claim known to the Railroad from which liability may be charged against Santa Fe Rail hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, the satisfaction and discharge of this Agreement or the termination of this Agreement in any manner.

The Railroad, for the benefit of any assignee of Santa Fe Rail pursuant to the Assignment (or otherwise), for value received, hereby unconditionally guarantees to such assignee the due and punctual performance of all obligations of Santa Fe Rail under the Assignment (or any such other assignment) and under its warranty and patent indemnification set forth above.

(e) GE Warranty. GE warrants to the Railroad that each unit of Equipment manufactured by it hereunder will be free from defects in material, workmanship and title under normal use and service, and will be of the kind and quality designated or described in the Specifications referred to in Article 2 of this Agreement. The foregoing warranty is exclusive and in lieu of all other warranties, whether written, oral, implied or statutory (except as to title). NO WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR PURPOSE SHALL APPLY. If it appears within two years from the date of shipment by GE, or within 250,000 miles of operation, whichever event shall first occur, that any unit of the Equipment does not meet the warranties specified above, and the Railroad or its agent notifies GE promptly, GE, after verification as to condition and usage, shall correct any defect including nonconformance with the Specifications, at its option, either by repairing any defective part or parts made available to GE, or by making available at GE's plant or warehouse a repaired or replacement part. If requested by GE, the Railroad will ship the defective part or parts, with shipping charges prepaid, to the plant or warehouse designated by GE.

The liability of GE to the Railroad (except as to

title) arising out of the supplying of any unit of Equipment hereunder, or its use, whether on warranty, contract or negligence, shall not in any case exceed the cost of correcting defects in the Equipment as herein provided, and upon the expiration of the warranty period specified above, all such liability shall terminate. GE shall have no liability for any unit of Equipment or part thereof which becomes defective by reason of improper storage or application, misuse, negligence, accident or improper operation, maintenance, repairs or alterations on the part of the Railroad, or any third party other than GE. The foregoing shall constitute the sole remedy of the Railroad and the sole liability of GE.

It is understood that GE has the right to make any changes in design and add improvements to equipment at any time without incurring any obligations to install, at GE's expense, the same on other equipment sold by GE.

THERE ARE NO WARRANTIES WITH RESPECT TO MATERIAL AND WORKMANSHIP, EXPRESS OR IMPLIED, MADE BY GE EXCEPT THE WARRANTIES SET OUT ABOVE.

GE further agrees with the Railroad that neither the inspection as provided in Article 3 of this Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Railroad of any of its rights under this Item 2. In no event, whether as a result of breach of contract, warranty, tort (including negligence) or otherwise, shall GE or its suppliers be liable for any special, consequential, incidental or penal damages including, but not limited to, loss of profit or revenues, loss of use of the products or any associated equipment, damage to associated equipment, cost of capital, cost of substitute products, facilities, services or replacement power, downtime costs, or claims of the Railroad's customers for such damages. If the Railroad transfers title to or leases the products hereunder to any third party (other than as permitted by this Agreement), the Railroad shall obtain from such third party a provision affording

GE and its suppliers the protection of the preceding sentence.

In no event, whether as a result of breach of contract, warranty, tort (including negligence) or otherwise, shall GE's liability to the Railroad for any loss or damage arising out of, or resulting from this agreement, or from its performance or breach, or from the productions or services furnished hereunder, exceed the price of the specific product or service which gives rise to the claim. Except as to title any such liability shall terminate upon the expiration of the warranty period specified below. If GE furnishes the Railroad with advice or other assistance which concerns any product supplied hereunder or any system or equipment in which any such product may be installed and which is not required pursuant to this agreement, the furnishing of such advice or assistance will not subject GE to any liability, whether in contract, warranty, tort (including negligence) or otherwise.

The invalidity, in whole or in part, of any of the foregoing paragraphs will not affect the remainder of such paragraph or any other paragraph in this paragraph (e).

GE Patent Indemnification. Except in cases of designs specified by the Railroad and not developed or purported to be developed by GE, and articles and materials specified by the Railroad and not manufactured by GE, GE warrants that the Equipment furnished hereunder, and any part thereof, shall be delivered free of any rightful claim of any third party for infringement of any United States patent. If notified promptly in writing and given authority, information and assistance, GE shall defend, or may settle, at its expense, any suit or proceeding against the Railroad so far as based on a claimed infringement which would result in a breach of this warranty and GE shall pay all damages and costs awarded therein against the Railroad due to such breach. In case any equipment or part thereof is in such suit or proceeding found to constitute such an infringement and the use of such Equipment or

part thereof is enjoined, GE shall, at its expense and option, either procure for the Railroad the right to continue using said equipment or part thereof, or replace same within six months of such injunction with noninfringing Equipment or part thereof acceptable to the Railroad, or modify same so it becomes noninfringing, or remove the Equipment or part thereof and refund the Purchase Price (less reasonable depreciation for any period of use) and any transportation costs separately paid by the Railroad, but in each case without impairing the operational capability of such Equipment. (If the Purchase Price is so refunded, such refund shall be made to the assignee of GE's rights under this Agreement if this Agreement has been so assigned.) The preceding shall not apply to the use of any Equipment or part thereof furnished hereunder in conjunction with any other product in a combination not furnished by GE as a part of this transaction. As to any such combination, GE assumes no liability whatsoever for patent infringement and the Railroad will hold GE harmless against any infringement claims arising therefrom. GE will give notice to the Railroad of any claim known to GE from which liability may be charged against the Railroad hereunder and the Railroad will give notice to GE of any claim known to them from which liability may be charged against GE hereunder.

The foregoing states the entire liability of GE for patent infringement by the Equipment or any part thereof.

- Item 3: The Maximum Purchase Price referred to in Article 4 of this Agreement is \$60,000,000 plus the amount, if any, by which the Deposits of the institutional investors named in the Finance Agreement are increased pursuant to Paragraph 1 of the Finance Agreement.

SCHEDULE B

to

Conditional Sale Agreement

<u>Builder</u>	<u>Type</u>	<u>Builder's Specifications</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Estimated Unit Base Price</u>	<u>Estimated Total Base Price</u>	<u>Road Numbers (Inclusive)</u>	<u>Estimated Time and Place of Delivery</u>
General Motors Corporation (Electro-Motive Division)	2,300 h.p. Model GP-39-2 Diesel Electric Locomotives	EMD Specif. 8075 dated July 1977	La Grange, Illinois	10	\$650,000	\$ 6,500,000	3696 through 3705	April 1980; f.o.b. McCook, Illinois
PACCAR Inc	62' Insulated Box Cars AAR Mechanical Designation: XLI	PC-658 dated 8/1/79	Renton, Washington	54	79,630	4,300,020	AT-625378 through AT-625431	March 1980; Renton, Washington
PACCAR Inc	61' Insulated Box Cars AAR Mechanical Designation: XLI	PC-680 dated 3/26/79	Renton, Washington	300	72,000	21,600,000	AT-622800 through AT-623099	April-July 1980; Renton, Washington
Difco Inc.	77-ton, 50-cu. yd. Air Dump Gondola Cars AAR Mechanical Designation: MWD	Difco Drawing 8276-E dated 11/5/76	Findley, Ohio	30	60,000	1,800,000	AT-186230 through AT-186259	June-Aug., 1980; Findley, Ohio
Santa Fe Rail Equipment Co.	60' Plain Box Cars AAR Mechanical Designation: XF	AT&SF Ry. Specif. 2959	Topeka, Kansas	107	64,000	6,848,000	AT-612000 through AT-612106	Aug.-Dec., 1980; Topeka, Kansas
General Electric Company	3,000 h.p. Model C-30-7 Diesel Electric Locomotives	GE Specif. 3390G dated 1/15/79	Erie, Pennsylvania	24	791,667	19,000,000	8099 through 8122	May 1980; f.o.b. Builder's plant, Erie, Pennsylvania

\$60,048,020

CONDITIONAL SALE AGREEMENT

Dated as of March 1, 1980

Between Each of

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

and

PACCAR INC,

and

DIFCO INC.,

and

SANTA FE RAIL EQUIPMENT CO.

and

GENERAL ELECTRIC COMPANY

and

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

12-1/4% Conditional Sale Indebtedness Due October 1, 1995

sold hereunder) named in Item 1 of Schedule A hereto and any successor or successors for the time being to their respective manufacturing properties and businesses.

The rights and obligations of the Builders under this Agreement are several in accordance with their interests and not joint. Accordingly, whenever this Agreement, by the use of such designation as "the Vendor", "such Builder" or other similar term, confers a right or imposes an obligation upon any corporation named in Item 1 of Schedule A hereto or its successor, such right or obligation shall be construed to accrue to or to be enforceable against only the specific corporation furnishing the units of Equipment giving rise to such right or obligation and its successors as herein provided.

The term "Officer's Certificate" as used in this Agreement shall mean a certificate signed by the President, any Vice President, the Controller, the Secretary, the Treasurer or any Assistant Treasurer of the Railroad, and the term "Request" shall mean a written request for the action therein specified, delivered to the Vendor, dated not more than 10 days prior to the date of delivery to the Vendor and signed on behalf of the Railroad by the President, a Vice President, the Treasurer, any Assistant Treasurer, the Secretary, the Controller or any Assistant Secretary of the Railroad.

ARTICLE 2. Construction and Sale. Pursuant to this Agreement, each Builder shall construct or cause to be constructed the units of the Equipment to be constructed by it as described in Schedule B hereto (such units of Equipment with respect to such Builder being hereinafter called "its Equipment") at its plant described in said Schedule B and will sell and deliver to the Railroad, and the Railroad will purchase from such Builder and accept delivery of and pay for such Equipment, each unit of which shall be constructed in accordance with the specifications referred to in Schedule B hereto and in accordance with such modifications thereof as may be agreed upon in writing between such Builder and the Railroad (which specifications and modifications, if any, are called the "Specifications"). The design, quality and component parts of each unit of the Equipment shall conform, on the date of completion of manufacture of each thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards recommended by the

Association of American Railroads reasonably interpreted as being applicable to equipment of the character of such units of the Equipment and each unit of the Equipment will be new railroad equipment first put into service on or after March 1, 1980.

ARTICLE 3. Inspection and Delivery. Each Builder will deliver the units of its Equipment to the Railroad at the place or places specified in Schedule B hereto (or if said Schedule B does not specify a place or places, at the place or places designated from time to time by the Railroad), freight charges, if any, prepaid and for the account of the Railroad, in accordance with the delivery schedule set forth in Schedule B hereto; provided, however, that no Builder shall have any obligation to deliver any unit of Equipment hereunder (i) at any time after the commencement of any proceedings specified in clause (c) or (d) of Article 16 hereof, (ii) if any event of default (as described in said Article 16), or event which with the lapse of time and/or demand would constitute such an event of default, shall have occurred and be continuing, or (iii) following receipt of written notice from the Assignee that there has been since ~~December 31, 1979~~ ^{September 30, 1979} a material adverse change in the assets, liabilities, business or condition (financial or otherwise) of the Railroad and subsidiary companies until such time as such written notice may be canceled by a further written notice.

Each Builder's obligation as to time of delivery is subject, however, to delays resulting from causes beyond such Builder's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

Notwithstanding the preceding provisions of this Article 3, any Equipment not delivered, accepted and settled for pursuant to Article 4 hereof on or before December 31, 1980 (the "Cut-Off Date"), shall be excluded herefrom. If any unit or units of Equipment shall be excluded from this Agreement pursuant to the preceding sentence, the Builder or Builders of such unit or units and the Railroad shall execute an agreement supplemental hereto limiting this Agreement to the units of Equipment not so

excluded herefrom. If a Builder's failure to deliver Equipment so excluded from this Agreement resulted from one or more of the causes set forth in the immediately preceding paragraph, the Railroad shall nevertheless be obligated to accept such Equipment and pay the full purchase price therefor, determined as provided in the applicable Interim Document.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Railroad and each Builder shall grant to such authorized inspectors reasonable access to its plant. Each Builder agrees to inspect all materials used in the construction of its Equipment in accordance with the standard quality control practices of such Builder. Upon completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the Railroad for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Railroad shall execute and deliver to such Builder a certificate of acceptance (the "Certificate of Acceptance") stating that such unit or units have been inspected and accepted on behalf of the Railroad and are marked in accordance with Article 7 hereof; provided, however, that such Builder shall not thereby be relieved of its warranty referred to in Article 14 hereof.

On delivery of each such unit hereunder at the place specified for delivery, the Railroad will assume the responsibility and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of such unit.

ARTICLE 4. Purchase Price and Payment. The base price or prices per unit of the Equipment are set forth in Schedule B hereto. Such base price or prices are subject to such increase or decrease as is agreed to by the Builder thereof and the Railroad. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased.

If the aggregate Purchase Price of Equipment under this Agreement shall exceed the Maximum Purchase Price (as defined in Item 3 of Schedule A hereto), the

Builder or Builders (and any assignee of the Builders) and the Railroad, unless waived by the Railroad, will enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for and specified by the Railroad, as will, after giving effect to such exclusion, reduce the aggregate Purchase Price of the Equipment under this Agreement to not more than the Maximum Purchase Price, and the Railroad agrees to purchase any such unit or units so excluded from this Agreement from the Builder thereof for cash on the date such unit or units would otherwise have been settled for under this Agreement either directly or, in case the Railroad shall arrange therefor, by means of a conditional sale, equipment trust or other appropriate method of financing as the Railroad shall determine and shall be reasonably acceptable to such Builder.

For the purpose of making settlement, the Equipment of each Builder shall be divided into such number of groups of units of the Equipment, delivered to and accepted by the Railroad (a "Group"), as such Builder and the Railroad may agree to. The term "Closing Date" with respect to any Group of the Equipment shall mean such date (on or after March 26, 1980, and on or prior to the Cut-Off Date), not more than 30 days following presentation by the Builder of the Equipment in such Group to the Railroad of the invoice and the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Railroad by written notice delivered to the Vendor at least 5 business days prior to the Closing Date designated therein; provided, however, that the aggregate of the Invoiced Purchase Prices (as hereinafter defined) of all Equipment settled for pursuant to this Agreement on any Closing Date shall not exceed (y) the amount then on deposit with the Assignee pursuant to the Finance Agreement under which the Assignee is acting as agent for the institutional investors therein named plus (z) the amount payable by the Railroad pursuant to subparagraph (a) of the next paragraph of this Article 4.

The Railroad hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment,

as follows:

(a) on the Closing Date for each Group the amount, if any, by which (x) the Purchase Price of all units of the Equipment for which settlement has theretofore or is then being made, as stated in the invoice or invoices presented in respect of such Closing Date (said invoiced prices being herein called the "Invoiced Purchase Prices"), exceeds (y) the sum of the Maximum Purchase Price and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to this subparagraph (a); and

(b) in 15 consecutive equal annual installments, as hereinafter provided, an amount equal to the aggregate of the Invoiced Purchase Prices for all the Equipment less the amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph (the aggregate of said installments being hereinafter called the "CSA Indebtedness").

In the event that on any Closing Date the final Purchase Price of any Group has not been finally determined, the invoice presented may be for an estimated Purchase Price (as evidenced by the words "Interim Invoice" written on the face of such invoice), subject to adjustment upon determination of the final Purchase Price, and a supplemental invoice may be presented by the appropriate Builder at least 10 business days prior to any subsequent Closing Date for settlement on such subsequent Closing Date for any increase in the Purchase Price; it being agreed by such Builder that the estimated Purchase Price in any Interim Invoice presented by it shall be calculated in such manner that in no event shall such estimated Purchase Price be in excess of the final Purchase Price of such Group. If a supplemental invoice is presented to the Railroad by the Builder at least 10 business days prior to any subsequent Closing Date with respect to any Group of Equipment, such supplemental invoice shall be settled for at such subsequent Closing Date. If a supplemental invoice is presented to the Railroad by a Builder after, or less than 10 business days prior to, the Closing Date when all units of the Equipment of the Builder shall have been delivered, accepted and settled for, but prior to the Repayment Date (as defined in Paragraph 4 of the Finance Agreement), the Railroad shall designate a Closing Date with respect to

such supplemental invoice. If a supplemental invoice is presented by a Builder after the Repayment Date, it shall be paid in cash by the Railroad to such Builder in accordance with the terms of the original purchase order given by the Railroad and accepted by such Builder in respect of its Equipment.

The installments of the CSA Indebtedness payable pursuant to subparagraph (b) of the preceding paragraph of this Article 4 shall be payable annually on October 1, in each year commencing on October 1, 1981, to and including October 1, 1995, or, if any such date is not a business day, on the next business day. The unpaid portion of the CSA Indebtedness shall bear interest from the respective Closing Dates on which such indebtedness was incurred at the rate of 12-1/4% per annum. All such interest shall be payable, to the extent accrued, on April 1 and October 1 in each year, commencing October 1, 1980, or, if any such date is not a business day, on the next business day.

All interest under this Agreement shall be calculated on the basis of a 360-day year of 12 30-day months.

The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in Chicago, Illinois, or New York, New York, are authorized or obligated to remain closed.

The Railroad will pay, to the extent legally enforceable, interest at the rate of 13-1/4% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

Except as provided in Article 8 hereof, the Railroad shall not have the privilege of prepaying any installment of its indebtedness hereunder prior to the date it becomes due.

In the event the Vendor, pursuant to Article 15

hereof, assigns the right to receive the payments herein provided to be made by the Railroad, the assignee thereof may request the Railroad to make and the Railroad shall make such payments to it at such address as shall be supplied to the Railroad by the assignee.

ARTICLE 5. Taxes. All payments to be made by the Railroad hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, Federal or foreign taxes (other than net income, gross receipts [except gross receipts taxes in the nature of or in lieu of sales or use taxes], excess profits and similar taxes) or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called "impositions"), all of which impositions the Railroad assumes and agrees to pay on demand. The Railroad will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its interest therein and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the security interest of the Vendor or result in a lien upon any part of the Equipment; provided, however, that the Railroad shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the interest or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any such impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Railroad shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; provided, however, that the Railroad shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Railroad shall have approved the payment thereof.

ARTICLE 6. Security Interest in the Equipment.

The Vendor shall and hereby does retain a security interest in the Equipment until the Railroad shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as provided in this Agreement. Any and all additions to the Equipment that are not readily removable without damage to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 8 hereof, when and only when the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, shall have been paid, and all the Railroad's obligations herein contained shall have been performed by the Railroad, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Vendor. However, the Vendor, upon receipt of a Request at that time, will (a) execute a bill or bills of sale for the Equipment transferring and releasing its interest therein to the Railroad, or upon its order, free of all claims, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Railroad, (b) execute and deliver, for filing in all necessary public offices, such instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the release of the security interest of the Vendor in the Equipment and (c) pay to the Railroad any money paid to the Vendor pursuant to Article 8 hereof and not theretofore applied as therein provided. The Railroad hereby waives any and all rights in or to the payment of any penalty or damages for failure to execute and deliver such bill or bills of sale or instruments, except for failure to execute and deliver the same within a reasonable time after receipt of a Request.

ARTICLE 7. Marking of the Equipment.

The Railroad will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in Schedule B hereto, or in the case of Equipment not there

listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the words "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION" or other appropriate markings approved by the Vendor with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's interest in the Equipment and its rights under this Agreement. The Railroad will not place any such unit in operation or exercise any control or dominion over the same until such markings have been made thereon and will replace promptly any such markings which may be removed, defaced, obliterated or destroyed. The Railroad will not change the number of any unit of the Equipment except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor by the Railroad and filed, recorded and deposited by the Railroad in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Railroad will not allow the name of any person, firm, association or corporation to be placed on any of the Equipment as a designation which might be interpreted as a claim of ownership thereof by the Railroad or by any person, firm, association or corporation other than the Vendor; provided, however, that the Railroad may cause the Equipment to be lettered with the names or initials or other insignia of the Railroad or its affiliates.

ARTICLE 8. Casualty Occurrences; Insurance. In the event that any unit of the Equipment shall be worn out, lost, stolen, destroyed, irreparably damaged or otherwise rendered permanently unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise or the Purchase Price (or any portion thereof) of any unit shall have been refunded by a Builder pursuant to such Builder's patent indemnities therefor as set forth in Item 2 of Schedule A hereto (such occurrences being hereinafter called "Casualty Occurrences"), the Railroad shall promptly and fully inform the Vendor in regard thereto (after it has knowledge of such Casualty Occurrence). When the aggregate Casualty Value (as defined

herein) of all units having suffered a Casualty Occurrence (exclusive of units having suffered a Casualty Occurrence with respect to which a payment shall have been made to the Vendor pursuant to this Article 8) hereunder shall exceed \$250,000 (or such lesser amount as the Railroad may elect), the Railroad shall promptly pay to the Vendor a sum equal to the aggregate Casualty Value of such units of the Equipment as of the date of such payment and shall file with the Vendor an Officer's Certificate setting forth the Casualty Value of each unit of the Equipment suffering a Casualty Occurrence.

So long as no event of default shall have occurred and be continuing, any money paid to the Vendor pursuant to the preceding paragraph of this Article 8 shall be used, as the Railroad shall from time to time direct in a Request, in whole or in part, to prepay installments of CSA Indebtedness or toward the cost of a unit or units of new standard-gauge railroad equipment (other than passenger or work equipment) to replace units suffering a Casualty Occurrence; provided, however, that, if the amount (excluding amounts referred to in the immediately following proviso) paid to the Vendor pursuant to the preceding paragraph of this Article 8 and not theretofore applied toward the cost of replacement units exceeds \$4,000,000 at the due date of an annual installment of the CSA Indebtedness, such excess shall be applied on such date to prepay installments of the CSA Indebtedness; provided further, however, that the Railroad shall direct that any money paid to the Vendor in respect of Equipment which shall be worn out be applied only toward the cost of replacement units and not to prepay any installment of the CSA Indebtedness; provided further, however, that no caboose shall be included as a replacement unit if the Purchase Price thereof (together with the Purchase Price of all other cabooses constituting replacement units and included as Equipment hereunder) shall exceed 3% of the outstanding CSA Indebtedness at the date of such Request. In case any money is applied pursuant to this Article 8 to prepay indebtedness, it shall be accompanied by accrued interest on the amount prepaid and shall be so applied to reduce each installment of CSA Indebtedness thereafter falling due pro rata.

The "Casualty Value" of each unit of the Equipment (other than a replacement unit) shall be deemed to be that amount which bears the same ratio to the original Purchase Price thereof (less, in the event the Railroad

shall have made any payments under the provisions of subparagraph (a) of the third paragraph of Article 4 hereof, an amount which bears the same ratio to the aggregate of all such payments as the original Purchase Price of such unit bears to the original aggregate Purchase Price of all the Equipment) as the unpaid CSA Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) as of the date payment is made with respect to such Casualty Occurrence bears to the original CSA Indebtedness. The Casualty Value of each replacement unit shall be deemed to be that amount which bears the same ratio to the portion of the cost thereof paid by the Vendor as the unpaid CSA Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) as of the date payment is made with respect to such Casualty Occurrence bears to the unpaid CSA Indebtedness (without giving effect to any such prepayments) as of the date of acquisition by the Vendor of such replacement unit.

The Railroad will cause any replacement unit or units to be marked as provided in Article 7 hereof. Any and all such replacements units shall constitute accessions to the Equipment and shall be subject to all appropriate terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement; provided, however, that nothing herein shall result in any Builder having any liability or obligation pursuant to this Agreement with respect to any replacement unit or units not manufactured by it. Title to all such replacement units shall be free and clear of all liens and encumbrances except the liens permitted by the second paragraph of Article 12 hereof and shall be taken initially and shall remain in the name of the Vendor subject to the provisions hereof, and the Railroad shall execute, acknowledge, deliver, file, record or deposit all such documents (including the filing of a supplement to this Agreement with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303) and do any and all such acts as may be necessary to cause such replacement units to come under and be subject to this Agreement. All such replacement units shall be guaranteed and warranted in like manner as is customary at the time for similar equipment.

Whenever the Railroad shall deliver a Request to apply amounts toward the cost of any replacement unit or

units, the Railroad shall also deliver therewith bills of sale, invoices and certificates of acceptance, substantially in the form provided by the Assignment, together with an opinion of counsel for the Railroad that the Vendor has a valid and perfected security interest in each such replacement unit, free and clear from all claims, liens, security interests and other encumbrances except the rights of the Railroad under this Agreement, that each such unit has come under and become subject to this Agreement and that an appropriate supplement to this Agreement has been executed and filed with the Interstate Commerce Commission as required by the next preceding paragraph hereof.

In order to facilitate the sale or other disposition of any Equipment suffering a Casualty Occurrence, the Vendor shall, upon Request, after payment by the Railroad of a sum equal to the Casualty Value of such Equipment, execute and deliver to the Railroad or the Railroad's assignee or nominee, a bill of sale (without warranties) for such Equipment, and such other documents as may be required to release such Equipment from the terms and scope of this Agreement, in such form as may be reasonably requested by the Railroad.

So long as no event of default shall have occurred and be continuing, any money paid to the Vendor pursuant to this Article 8 shall, if the Railroad shall direct, be invested, pending its application as hereinabove provided, in such of the following as may be specified by the Railroad: (i) direct obligations of the United States of America or obligations for which the full faith and credit of the United States is pledged to provide for the payment of principal and interest, (ii) open market commercial paper rated A-1 or A-2 by Standard & Poor's Corporation or prime-1 or prime-2 by NCO/Moody's Commercial Paper Division of Moody's Investors Service, Inc., or the successor of either of them, or (iii) certificates of deposit of domestic commercial banks in the United States of America having total capital and surplus in excess of \$100,000,000, in each case maturing in not more than one year from the date of such investment (such investments being herein called "Investments"). Any such Investments shall from time to time be sold and the proceeds reinvested in such Investments as the Railroad may in a Request direct. Any interest received by the Vendor on any Investments shall be held by the Vendor and applied as hereinafter provided. Upon any sale or the maturity of any Invest-

ments, the proceeds thereof, plus any interest received by the Vendor thereon, up to the cost (including accrued interest) thereof, shall be held by the Vendor for application pursuant to this Article 8, and any excess shall be paid to the Railroad. If such proceeds (plus such interest) shall be less than such cost, the Railroad will promptly pay to the Vendor an amount equal to such deficiency. The Railroad will pay all expenses incurred by the Vendor in connection with the purchase and sale of Investments.

If any unit of the Equipment is removed for repairs other than running repairs or becomes unsuitable or not necessary for continued use by the Railroad in its business or operations, such occurrence shall, upon the election of the Railroad evidenced by a Request, constitute a Casualty Occurrence subject to the provisions of this Article 8; provided, however, that the Railroad shall direct any money paid to the Vendor in respect thereof to be applied only toward the cost of replacement units and not to prepay any installment of CSA Indebtedness.

Notwithstanding anything to the contrary contained in this Article 8, if one or more events of default shall have occurred and be continuing, all money held by the Vendor pursuant to this Article 8 (including, for this purpose, Investments) shall be applied by the Vendor as if such money were money received upon the sale of Equipment pursuant to Article 17 hereof.

The Railroad will at all times, at its own expense, cause to be carried and maintained property and casualty insurance in respect of the Equipment, and public liability insurance, in amounts and against risks customarily insured against (taking into account self-insurance) by the Railroad in respect of similar equipment owned by it.

ARTICLE 9. Maintenance; Compliance with Laws and Rules. The Railroad agrees that, at its own cost and expense, it will maintain and keep the Equipment in good operating order, repair and condition, ordinary wear and tear excepted, and eligible (in the case of Equipment other than locomotives) for railroad interchange in accordance with the interchange rules of the Association of American Railroads or other applicable regulatory body.

During the term of this Agreement, the Railroad will at all times comply in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all laws of the jurisdictions in which its operations involving the Equipment may extend, with the Interchange Rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration or replacement of or addition to any part on any unit of the Equipment, the Railroad will conform therewith, at its own expense; provided, however, that the Railroad may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor (if the Vendor shall at any time so advise the Railroad), adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 10. Reports and Inspections. On or before April 1 in each year, commencing with the year 1981, the Railroad shall furnish to the Vendor an Officer's Certificate (a) setting forth as at the preceding December 31 the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding 12 months (or since the date of this Agreement in the case of the first such statement) or that have been withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 7 hereof have been preserved or replaced. The Vendor shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

ARTICLE 11. Possession and Use. The Railroad, so long as an event of default shall not have occurred and be continuing hereunder, shall be entitled, from and after delivery of units of the Equipment by the Builder thereof to the Railroad, to the possession of such units of Equip-

ment and the use thereof upon the lines of railroad owned or operated by it either alone or jointly with others and whether under lease or otherwise, or upon the lines of railroad owned or operated by any railroad company controlled by, or under common control with, the Railroad, or over which it has trackage rights, or upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, and may enter into a written lease of one or more units of the Equipment for a term not exceeding six months with any affiliate or any other solvent railroad company incorporated in the United States of America (or any state thereof or the District of Columbia), but only upon and subject to all the terms and conditions of this Agreement; provided, however, that any such lease permitted hereunder shall state expressly that the rights of the lessee thereunder are subject and subordinate to the rights and remedies of the Vendor under this Agreement; and, provided, further, however, that neither the Railroad nor any such lessee shall be entitled to assign the Equipment for use or service outside of the United States of America except in normal interchange.

Any such lease may provide that the lessee, so long as it shall not be in default under such lease, shall be entitled to the possession of the Equipment included in such lease and the use thereof subject to the rights and remedies of the Vendor in respect of the Equipment covered by such lease upon the occurrence of an event of default hereunder; and, subject to the provisions of Article 7 hereof, may provide for lettering or marking upon such Equipment for convenience of identification of the leasehold interest of such lessee therein. A copy of the form of each lease (and of each amendment thereto, if any) shall promptly be filed with the Vendor.

ARTICLE 12. Prohibition Against Liens. The Railroad will pay or discharge any and all sums claimed by any party from, through or under the Railroad or its successors or assigns which, if unpaid, might become a lien, charge or security interest on or in the Equipment, or any unit thereof, equal or superior to the Vendor's interest therein; provided, however, that the Railroad shall be under no obligation to pay or discharge any such claim so long as it is contesting in good faith and by appropriate legal proceedings such claim and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor in or to the

Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

ARTICLE 13. Railroad's Indemnities. The Railroad will indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of retention by the Vendor of a security interest in the Equipment, the use and operation thereof by the Railroad during the period when said security interest remains in the Vendor or the transfer of said security interest in the Equipment by the Vendor pursuant to any of the provisions of this Agreement.

ARTICLE 14. Patent Indemnities; Builder's Warranty of Material and Workmanship. Each Builder's indemnities with respect to patent infringement, its warranty of material and workmanship and the limitations of its liability with regard thereto and certain agreements of the Railroad are set forth in Item 2 of Schedule A hereto.

ARTICLE 15. Assignments. The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Vendor. A sale, assignment, transfer or disposition to a solvent, Class 1 railroad company organized under the laws of the United States of America or any of the states thereof which shall acquire all or substantially all the lines of railroad of the Railroad, and which, by execution of an appropriate instrument satisfactory to the Vendor, shall assume and agree to perform each of, and all, the obligations and covenants of the Railroad under this Agreement, shall not be deemed a breach of this covenant and thereupon, the successor railroad company shall be for all

purposes the "Railroad" hereunder.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Railroad, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve any Builder from, any of the obligations of such Builder to construct and deliver the Equipment in accordance with this Agreement or to respond to its warranties and indemnities contained or referred to in Article 14 hereof and Schedule A hereto, or relieve the Railroad of any of its obligations to such Builder under Articles 2, 3, 4, 5, 13 and 14 hereof, Schedule A hereto and this Article 15 or of any other obligation which, according to its terms or context, is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to the Railroad, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall by virtue of such assignment acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Railroad of the notification of any such assignment, all payments thereafter to be made by the Railroad under this Agreement to the Vendor shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

The Railroad recognizes that it is the custom of railroad equipment manufacturers to assign conditional sale agreements and understands that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Railroad represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder and for the purpose of inducing such acquisition, that, in the event of such assignment, the rights of such assignee to the entire unpaid indebtedness in respect of the Purchase Price or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense,

setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of any Builder with respect to its Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by a Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against the respective Builders.

The Railroad will (a) in connection with each settlement for the Equipment subsequent to such assignment, deliver to the assignee, at least five business days prior to the Closing Date for the Group fixed in the notice by the Railroad, all documents required by the terms of such assignment to be delivered to such assignee in connection with such settlement, in such number of counterparts or copies as may reasonably be requested, except for any opinion of counsel for such assignee, and (b) furnish to such assignee such number of counterparts of any other certificate or document required by the Vendor as may reasonably be requested.

If this Agreement shall have been assigned by the Builders and the assignee shall not make payment to a Builder with respect to units of the Equipment of such Builder as provided in the instrument making such assignment, such Builder will promptly notify the Railroad of such event and, if such amount shall not have been previously paid by such assignee, the Railroad will, not later than 60 days after the date such payment was due, pay the full purchase price therefor, determined as provided in this Agreement (together with interest from the day such payment was due to the date of payment by the Railroad at the highest prime rate of interest charged by any of the four New York City banks having the largest total assets in effect on the date such payment was due), such payment to be made in cash after the delivery of such Equipment, either directly, or, in case the Railroad shall arrange therefor, by means of a conditional sale agreement, equipment trust or such other appropriate method of financing as the Railroad shall determine and as shall be reasonably acceptable to such Builder.

ARTICLE 16. Defaults. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) the Railroad shall fail to pay in full any indebtedness in respect of the Purchase Price of the Equipment as provided in this Agreement or shall fail to pay in full any other sum payable by the Railroad as provided in this Agreement within five days after the same shall have become due and payable; or

(b) the Railroad shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Equipment on its part to be kept or performed or to make provision satisfactory to the Vendor for such compliance; or

(c) a petition for reorganization under Title 11 of the United States Code, as now constituted or hereafter amended, shall be filed by or against the Railroad and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been and shall not continue to be duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees, within 60 days after such petition shall have been filed and otherwise in accordance with the provisions of 11 U.S.C. § 1168, and successor provision, as the same may be hereafter amended; or

(d) any other proceedings shall be commenced by or against the Railroad for any relief which includes, or might result in, any modification of the obligation of the Railroad hereunder under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffec-

tiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been and shall not continue to be duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Railroad or for its property in connection with any such proceedings in such manner that such obligations have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have been commenced; or

(e) the Railroad shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Railroad and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Vendor, declare (hereinafter called a "Declaration of Default") the entire indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. The Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Railroad wherever situated. The Railroad shall promptly notify the Vendor in writing of any event which has come to its attention which constitutes, or which with the giving of notice and/or lapse of time could constitute, an event of default hereunder and of what action, if any, the Railroad has taken or proposes to take to remedy such event of default or event.

The Vendor may at its election waive any such event of default and its consequences and rescind and annul any Declaration of Default by notice to the Railroad in

writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default had been made. Notwithstanding the provisions of this paragraph, it is agreed by the Railroad that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 17. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may, subject to compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken by its agent or agents immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Railroad or any other person and for such purpose may enter upon the Railroad's premises or any other premises where the Equipment may be located (without judicial process if this can be done without breach of the peace) and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Railroad.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall reasonably designate a point or points upon the premises of the Railroad for the delivery of the Equipment to the Vendor, the Railroad shall, at its own expense, forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any part of the Equipment has been interchanged or leased to return the Equipment so interchanged or leased), cause (a) the Equipment to be moved to such point or points on its lines as shall be designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor and (b) the Equipment to be moved to such interchange point or points of the Railroad as shall be designated by the Vendor upon any sale, lease or other disposal of all or any part of the Equipment by the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines or premises of the Railroad

until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish, without charge for rent, storage or insurance (which the Railroad agrees to maintain as herein provided), the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Railroad, to provide proper maintenance for the Equipment during such storage and to permit inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Railroad requiring specific performance hereof. The Railroad hereby waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 17 provided) may at its election and upon such notice as is hereinafter set forth retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Railroad by telegram or registered mail, addressed as provided in Article 21 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Railroad's rights in the Equipment shall thereupon terminate and all payments made by the Railroad may be retained by the Vendor as compensation for the use of the Equipment by the Railroad; provided, however, that if the Railroad, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor

in retaking possession of, removing and storing the Equipment and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad; provided, further, that if the Railroad or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Railroad and to any other persons to whom the law may require notice of the time and place, may sell the Equipment, or any unit thereof, free from any and all claims of the Railroad or any other party claiming from, through or under the Railroad, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Railroad should tender full payment of the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad. The proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at

such place or places and at such time or times as the Vendor may specify, in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine. The Vendor or the Railroad may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Railroad shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed to the Railroad as provided in Article 21 hereof. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 offerees have been solicited in writing to submit bids), it shall be subject to the right of the Railroad to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Railroad (except to the extent of surplus money received as hereinafter provided in this Article 17), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of the sums due to the Vendor from the Railroad hereunder. From and after the date of any such sale, the Railroad shall pay to the Vendor the per diem interchange for each unit of Equipment which shall not have been assembled, as hereinabove provided, by the date of such sale for each day from the date of such sale to the date of delivery to the purchaser at such sale.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly

granted to the Railroad shall not otherwise alter or affect the Vendor's rights or the Railroad's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Railroad's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Railroad shall pay the amount of such deficiency to the Vendor upon demand, together with interest from the date of such demand to the date of payment by the Railroad at the rate per annum set forth in Article 4 hereof applicable to amounts remaining unpaid after becoming due and payable. If the Railroad shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Railroad.

The Railroad will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including attorneys' fees, if any, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 18. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Railroad to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Railroad, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment or any unit thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 19. Recording. The Railroad will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303; and the Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit, record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its interest in the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement.

The Railroad will promptly furnish to the Vendor evidence of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Railroad with respect thereto satisfactory to the Vendor.

ARTICLE 20. Payment of Expenses. The Railroad will pay all reasonable costs and expenses (other than the fees and expenses of counsel for the Builders) incident to this Agreement and the first assignment of this Agreement (including the fees and expenses of an agent, if the first assignee is an agent), and any instrument supplemental or related hereto or thereto, including all fees and expenses of Messrs. Cravath, Swaine & Moore, special counsel for the first assignee of this Agreement and for any party acquiring interests in such first assignment, and all reasonable costs and expenses in connection with the transfer by any party of interests acquired in such first assignment, but excluding all fees and expenses of any other counsel for such parties.

ARTICLE 21. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at its chief

place of business at the following specified addresses:

(a) to the Railroad, at 80 East Jackson Boulevard, Chicago, Illinois 60604, Attention of Vice President-Finance,

(b) to a Builder, at its address specified in Item 1 of Schedule A hereto, and

(c) to any assignee of the Vendor or of the Railroad, at such address as may have been furnished in writing to each of the other parties hereto by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 22. Article Headings; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including the Schedules hereto, exclusively states the rights of the Vendor and the Railroad with respect to the Equipment and supersedes all other agreements, oral or written (including the Interim Documents), with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Vendor and the Railroad.

ARTICLE 23. Law Governing. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred pursuant to 49 U.S.C. § 11303, and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the marking of the units of Equipment provided for in Article 7 hereof.

ARTICLE 24. Execution. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. It shall not be necessary that any counterpart be signed by all the parties so long as the Railroad and each Builder has executed and delivered a counterpart to the other, whereupon this Agreement shall become effective with respect to the Railroad and such Builder. Each Builder shall be bound hereunder notwithstanding the failure of any other Builder to execute and deliver this Agreement or to perform its obligations hereunder. Although this Agreement is dated, for convenience, as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by their officers or other persons, thereunto duly authorized, and their respective corporate seals to be hereunto affixed, duly attested, all as of the date first above written.

THE ATCHISON, TOPEKA AND
SANTA FE RAILWAY COMPANY,

[Corporate Seal]

by

Vice President

Attest:

Assistant Secretary

GENERAL MOTORS CORPORATION,
(Electro-Motive Division),

[Corporate Seal]

by

Vice President


Attest:

Assistant Secretary

PACCAR INC.,

[Corporate Seal]

by



Vice President

Attest:


~~Assistant~~ Secretary

DIFCO INC.,

[Corporate Seal]

by

Vice President

Attest:

Secretary

SANTA FE RAIL EQUIPMENT CO.,

[Corporate Seal]

by

President

Attest:

Secretary

GENERAL ELECTRIC COMPANY,

[Corporate Seal]

by

Attest:

Attesting Secretary

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this day of March 1980, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this day of March 1980, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (Electro-Motive Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

STATE OF WASHINGTON,)
) ss.:
COUNTY OF KING,)

On this 30th day of March 1980, before me personally appeared J. J. Golley, to me personally known, who, being by me duly sworn, says that he is a Vice President of PACCAR INC, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Virginia L. Lepton
Notary Public

[Notarial Seal]

STATE OF OHIO,)
) ss.:
COUNTY OF HANCOCK,)

On this day of March 1980, before me personally appeared, to me personally known, who, being by me duly sworn, says that he is a Vice President of DIFCO INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this day of March 1980, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is the President of SANTA FE RAIL EQUIPMENT CO., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

COMMONWEALTH OF PENNSYLVANIA,)
) ss.:
COUNTY OF EIRE,)

On this day of March 1980, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is of GENERAL ELECTRIC COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

SCHEDULE A

to

Conditional Sale Agreement

- Item 1. (a) General Motors Corporation (Electro-Motive Division), a Delaware corporation, La Grange, Illinois 60525.
- (b) PACCAR Inc, a Delaware corporation, 1400 North 4th Street, Renton, Washington 98055, with a copy to General Counsel, PACCAR Inc, P. O. Box 1518, Bellevue, Washington 98009.
- (c) Difco Inc., an Ohio corporation, Differential Avenue, Findlay, Ohio 45840.
- (d) Santa Fe Rail Equipment Co., a Delaware corporation, 109 West Ninth Street, Topeka, Kansas 66628.
- (e) General Electric Company, a New York corporation, 2901 East Lake Road, Erie, Pennsylvania 16531.
- Item 2. (a) GM Warranty. General Motors Corporation ("GM") warrants that the Equipment manufactured by it hereunder is of the kind and quality described in, and will be built in accordance with, the Specifications referred to in Article 2 of this Agreement and is suitable for the ordinary purposes for which such Equipment is used and warrants each unit of such Equipment to be free from defects in material and workmanship which may develop under normal use and service within two years from date of delivery of such unit or before such unit has been operated 250,000 miles, whichever event shall first occur. GM agrees to correct such defects, which examination shall disclose to GM's satisfaction to be defective, by repair or replacement F.O.B. factory and such correction shall constitute fulfillment of GM's obligation with respect to such defect under this warranty. GM warrants specialties not of its own specification or design to the same extent that

the suppliers of such specialties warrant such items to GM. GM further agrees with the Railroad that neither the inspection as provided in Article 3 of this Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or modification by the Railroad of any of its rights under this Item 2(a).

THERE ARE NO WARRANTIES WITH RESPECT TO MATERIAL AND WORKMANSHIP, EXPRESSED OR IMPLIED, MADE BY GM EXCEPT THE WARRANTIES SET OUT ABOVE.

GM Patent Indemnification. GM shall defend any suit or proceeding brought against the Railroad and/or each assignee of GM's rights under this Agreement so far as the same is based on a claim that the Equipment of GM's specification, or any part thereof, furnished under this Agreement constitutes an infringement of any patent, if notified promptly in writing and given authority, information and assistance (at GM's expense) for the defense of same, and GM shall pay all damages and costs awarded therein against the Railroad or any such assignee.

In case any unit of such Equipment, or any part thereof, is in such suit held to constitute infringement and the use of such unit or part is enjoined, GM shall at its option and at its own expense either procure for the Railroad and any such assignee the right to continue using such unit or part, or replace the same with noninfringing equipment subject to this Agreement, or modify it so it becomes noninfringing, or remove such unit and refund the Purchase Price and the transportation and installations costs thereof. If the Purchase Price is so refunded, such refund shall be made to the assignee of GM's rights under this Agreement if this Agreement has been so assigned. GM will assume no liability for patent infringement by reason of purchase, manufacture, sale or use of devices not included in and covered by its specification. The foregoing states the entire liability of GM for patent infringement by the Equipment or any part thereof.

(b) PACCAR Warranty. PACCAR Inc ("PACCAR") warrants that its Equipment will be built in accordance with the requirements, specifications and standards set forth or referred to in Article 2 of this Agreement and, except in cases of articles and materials specified by the Railroad and not manufactured by PACCAR, warrants its Equipment to be free from defects in material and workmanship under normal use and service, the liability of PACCAR under this warranty being limited, as the Railroad may elect: (i) to repair the defects at PACCAR's plant; or (ii) to replacement of a defective part; or (iii) to the cost of repair or replacement according to the AAR Code of Rules Governing Condition of and Repairs to Freight and Passenger Cars with Interchange of Traffic. PACCAR shall be given reasonable opportunity to verify any claim of defects in workmanship or materials.

The foregoing warranty of PACCAR shall begin at the time of delivery of a unit of its Equipment to the Railroad and terminate two years after such delivery. PACCAR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. The Railroad's rights under the foregoing warranty shall be its sole and exclusive remedy and PACCAR will have no liability for lost profit or for indirect, incidental, consequential or commercial losses. This warranty is expressly in lieu of all other warranties expressed or implied on the part of PACCAR, except for the patent indemnification included in this Item 2(b), and PACCAR neither assumes nor authorizes any person to assume for it any other warranty liability in connection with the construction and delivery of its Equipment, except as aforesaid.

PACCAR further agrees with the Railroad that neither the inspection as provided in Article 3 of this Agreement, nor any examination, nor the acceptance of any units of its Equipment as provided in said Article 3 shall be deemed a waiver or modification by the Railroad of any of its rights under this Item 2(b).

PACCAR Patent Indemnification. Except in cases

of articles or materials specified by the Railroad and not manufactured by PACCAR and in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed by PACCAR, PACCAR agrees to indemnify, protect and hold harmless the Railroad from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Railroad, its assigns or the users of its Equipment because of the use in or about the construction or operation of any of its equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Railroad likewise will indemnify, protect and hold harmless the Vendor from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor because of the use in or about the construction or operation of any of its Equipment of any article or material specified by the Railroad and not manufactured by PACCAR or of any design, system, process, formula or combination specified by the Railroad and not developed or purported to be developed by PACCAR which infringes or is claimed to infringe on any patent or other right. PACCAR agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Railroad every claim, right and cause of action which PACCAR has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Railroad and purchased or otherwise acquired by PACCAR for use in or about the construction or operation of any of its Equipment on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. PACCAR further agrees to execute and deliver to the Railroad or the users of its Equipment all and every such further assurance as may be reasonably requested by the

Railroad more fully to effectuate the assignment and delivery of every such claim, right and cause of action. PACCAR will give notice to the Railroad of any claim known to PACCAR from which liability may be charged against the Railroad hereunder and the Railroad will give notice to PACCAR of any claim known to the Railroad from which liability may be charged against PACCAR hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, the satisfaction and discharge of this Agreement or the termination of this Agreement in any manner.

(c) Difco Warranty. Difco Inc. ("Difco") warrants that its Equipment will be built in accordance with the requirements, specifications and standards set forth or referred to in Article 2 of this Agreement and, except in cases of articles and materials specified by the Railroad and not manufactured by Difco, warrants its Equipment to be free from defects in material and workmanship under normal use and service, the liability of Difco under this warranty being limited, as the Railroad may elect: (i) to repair the defects at Difco's plant; or (ii) to replacement of a defective part; or (iii) to the cost of repair or replacement according to the AAR Code of Rules Governing Condition of and Repairs to Freight and Passenger Cars with Interchange of Traffic. Difco shall be given reasonable opportunity to verify any claim of defects in workmanship or materials.

The foregoing warranty of Difco shall begin at the time of delivery of a unit of its Equipment to the Railroad and terminate two years after such delivery. DIFCO MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. The Railroad's rights under the foregoing warranty shall be its sole and exclusive remedy and Difco will have no liability for lost profit or for indirect, incidental, consequential or commercial losses. This warranty is expressly in lieu of all other warranties expressed or implied on the part of Difco, except for the patent indemnification included in this Item 2(c), and Difco

neither assumes nor authorizes any person to assume for it any other warranty liability in connection with the construction and delivery of its Equipment, except as aforesaid.

Difco further agrees with the Railroad that neither the inspection as provided in Article 3 of this Agreement, nor any examination, nor the acceptance of any units of its Equipment as provided in said Article 3 shall be deemed a waiver or modification by the Railroad of any of its rights under this Item 2(c).

Difco Patent Indemnification. Except in cases of articles or materials specified by the Railroad and not manufactured by Difco and in the case of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed by Difco, Difco agrees to indemnify, protect and hold harmless the Railroad from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Railroad, its assigns or the users of its Equipment because of the use in or about the construction or operation of any of its equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Railroad likewise will indemnify, protect and hold harmless the Vendor from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor because of the use in or about the construction or operation of any of its Equipment of any article or material specified by the Railroad and not manufactured by Difco or of any design, system, process, formula or combination specified by the Railroad and not developed or purported to be developed by Difco which infringes or is claimed to infringe on any patent or other right. Difco agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Railroad every

claim, right and cause of action which Difco has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Railroad and purchased or otherwise acquired by Difco for use in or about the construction or operation of any of its Equipment on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. Difco further agrees to execute and deliver to the Railroad or the users of its Equipment all and every such further assurance as may be reasonably requested by the Railroad more fully to effectuate the assignment and delivery of every such claim, right and cause of action. Difco will give notice to the Railroad of any claim known to Difco from which liability may be charged against the Railroad hereunder and the Railroad will give notice to Difco of any claim known to the Railroad from which liability may be charged against Difco hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, the satisfaction and discharge of this Agreement or the termination of this Agreement in any manner.

The Railroad, for the benefit of any assignee of Difco pursuant to the Assignment (or otherwise), for value received, hereby unconditionally guarantees to such assignee the due and punctual performance of all obligations of Difco under the Assignment (or any such other assignment) and under its warranty and patent indemnification set forth above.

(d) Santa Fe Warranty. Santa Fe Rail Equipment Co. ("Santa Fe Rail") warrants that its Equipment will be built in accordance with the requirements, specifications and standards set forth or referred to in Article 2 of this Agreement and, except in cases of articles and materials specified by the Railroad and not manufactured by Santa Fe Rail, warrants its Equipment to be free from defects in material and workmanship under normal use and

service, the liability of Santa Fe Rail under this warranty being limited, as the Railroad may elect: (i) to repair the defects at Santa Fe Rail's plant; or (ii) to replacement of a defective part; or (iii) to the cost of repair or replacement according to the AAR Code of Rules Governing Condition of and Repairs to Freight and Passenger Cars with Interchange of Traffic. Santa Fe Rail shall be given reasonable opportunity to verify any claim of defects in workmanship or materials.

The foregoing warranty of Santa Fe Rail shall begin at the time of delivery of a unit of its Equipment to the Railroad and terminate two years after such delivery. SANTA FE RAIL MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. The Railroad's rights under the foregoing warranty shall be its sole and exclusive remedy and Santa Fe Rail will have no liability for lost profit or for indirect, incidental, consequential or commercial losses. This warranty is expressly in lieu of all other warranties expressed or implied on the part of Santa Fe Rail, except for the patent indemnification included in this Item 2(d), and Santa Fe Rail neither assumes nor authorizes any person to assume for it any other warranty liability in connection with the construction and delivery of its Equipment, except as aforesaid.

Santa Fe Rail further agrees with the Railroad that neither the inspection as provided in Article 3 of this Agreement, nor any examination, nor the acceptance of any units of its Equipment as provided in said Article 3 shall be deemed a waiver or modification by the Railroad of any of its rights under this Item 2(d).

Santa Fe Rail Patent Indemnification. Except in cases of articles or materials specified by the Railroad and not manufactured by Santa Fe Rail and in the cases of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed by Santa Fe Rail, Santa Fe Rail agrees to indemnify, protect and hold harmless the Railroad from and against any and all liability, claims, costs,

charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Railroad, its assigns or the users of its Equipment because of the use in or about the construction or operation of any of its equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Railroad likewise will indemnify, protect and hold harmless the Vendor from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor because of the use in or about the construction or operation of any of its Equipment of any article or material specified by the Railroad and not manufactured by Santa Fe Rail or of any design, system, process, formula or combination specified by the Railroad and not developed or purported to be developed by Santa Fe Rail which infringes or is claimed to infringe on any patent or other right. Santa Fe Rail agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Railroad every claim, right and cause of action which Santa Fe Rail has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Railroad and purchased or otherwise acquired by Santa Fe Rail for use in or about the construction or operation of any of its Equipment on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. Santa Fe Rail further agrees to execute and deliver to the Railroad or the users of its Equipment all and every such further assurance as may be reasonably requested by the Railroad more fully to effectuate the assignment and delivery of every such claim, right and cause of action. Santa Fe Rail will give notice to the Railroad of any claim known to Santa Fe Rail from which liability may be charged against the Railroad hereunder and the Railroad will give notice to

Santa Fe Rail of any claim known to the Railroad from which liability may be charged against Santa Fe Rail hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, the satisfaction and discharge of this Agreement or the termination of this Agreement in any manner.

The Railroad, for the benefit of any assignee of Santa Fe Rail pursuant to the Assignment (or otherwise), for value received, hereby unconditionally guarantees to such assignee the due and punctual performance of all obligations of Santa Fe Rail under the Assignment (or any such other assignment) and under its warranty and patent indemnification set forth above.

(e) GE Warranty. GE warrants to the Railroad that each unit of Equipment manufactured by it hereunder will be free from defects in material, workmanship and title under normal use and service, and will be of the kind and quality designated or described in the Specifications referred to in Article 2 of this Agreement. The foregoing warranty is exclusive and in lieu of all other warranties, whether written, oral, implied or statutory (except as to title). NO WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR PURPOSE SHALL APPLY. If it appears within two years from the date of shipment by GE, or within 250,000 miles of operation, whichever event shall first occur, that any unit of the Equipment does not meet the warranties specified above, and the Railroad or its agent notifies GE promptly, GE, after verification as to condition and usage, shall correct any defect including nonconformance with the Specifications, at its option, either by repairing any defective part or parts made available to GE, or by making available at GE's plant or warehouse a repaired or replacement part. If requested by GE, the Railroad will ship the defective part or parts, with shipping charges prepaid, to the plant or warehouse designated by GE.

The liability of GE to the Railroad (except as to

title) arising out of the supplying of any unit of Equipment hereunder, or its use, whether on warranty, contract or negligence, shall not in any case exceed the cost of correcting defects in the Equipment as herein provided, and upon the expiration of the warranty period specified above, all such liability shall terminate. GE shall have no liability for any unit of Equipment or part thereof which becomes defective by reason of improper storage or application, misuse, negligence, accident or improper operation, maintenance, repairs or alterations on the part of the Railroad, or any third party other than GE. The foregoing shall constitute the sole remedy of the Railroad and the sole liability of GE.

It is understood that GE has the right to make any changes in design and add improvements to equipment at any time without incurring any obligations to install, at GE's expense, the same on other equipment sold by GE.

THERE ARE NO WARRANTIES WITH RESPECT TO MATERIAL AND WORKMANSHIP, EXPRESS OR IMPLIED, MADE BY GE EXCEPT THE WARRANTIES SET OUT ABOVE.

GE further agrees with the Railroad that neither the inspection as provided in Article 3 of this Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Railroad of any of its rights under this Item 2. In no event, whether as a result of breach of contract, warranty, tort (including negligence) or otherwise, shall GE or its suppliers be liable for any special, consequential, incidental or penal damages including, but not limited to, loss of profit or revenues, loss of use of the products or any associated equipment, damage to associated equipment, cost of capital, cost of substitute products, facilities, services or replacement power, downtime costs, or claims of the Railroad's customers for such damages. If the Railroad transfers title to or leases the products hereunder to any third party (other than as permitted by this Agreement), the Railroad shall obtain from such third party a provision affording

GE and its suppliers the protection of the preceding sentence.

In no event, whether as a result of breach of contract, warranty, tort (including negligence) or otherwise, shall GE's liability to the Railroad for any loss or damage arising out of, or resulting from this agreement, or from its performance or breach, or from the productions or services furnished hereunder, exceed the price of the specific product or service which gives rise to the claim. Except as to title any such liability shall terminate upon the expiration of the warranty period specified below. If GE furnishes the Railroad with advice or other assistance which concerns any product supplied hereunder or any system or equipment in which any such product may be installed and which is not required pursuant to this agreement, the furnishing of such advice or assistance will not subject GE to any liability, whether in contract, warranty, tort (including negligence) or otherwise.

The invalidity, in whole or in part, of any of the foregoing paragraphs will not affect the remainder of such paragraph or any other paragraph in this paragraph (e).

GE Patent Indemnification. Except in cases of designs specified by the Railroad and not developed or purported to be developed by GE, and articles and materials specified by the Railroad and not manufactured by GE, GE warrants that the Equipment furnished hereunder, and any part thereof, shall be delivered free of any rightful claim of any third party for infringement of any United States patent. If notified promptly in writing and given authority, information and assistance, GE shall defend, or may settle, at its expense, any suit or proceeding against the Railroad so far as based on a claimed infringement which would result in a breach of this warranty and GE shall pay all damages and costs awarded therein against the Railroad due to such breach. In case any equipment or part thereof is in such suit or proceeding found to constitute such an infringement and the use of such Equipment or

part thereof is enjoined, GE shall, at its expense and option, either procure for the Railroad the right to continue using said equipment or part thereof, or replace same within six months of such injunction with noninfringing Equipment or part thereof acceptable to the Railroad, or modify same so it becomes noninfringing, or remove the Equipment or part thereof and refund the Purchase Price (less reasonable depreciation for any period of use) and any transportation costs separately paid by the Railroad, but in each case without impairing the operational capability of such Equipment. (If the Purchase Price is so refunded, such refund shall be made to the assignee of GE's rights under this Agreement if this Agreement has been so assigned.) The preceding shall not apply to the use of any Equipment or part thereof furnished hereunder in conjunction with any other product in a combination not furnished by GE as a part of this transaction. As to any such combination, GE assumes no liability whatsoever for patent infringement and the Railroad will hold GE harmless against any infringement claims arising therefrom. GE will give notice to the Railroad of any claim known to GE from which liability may be charged against the Railroad hereunder and the Railroad will give notice to GE of any claim known to them from which liability may be charged against GE hereunder.

The foregoing states the entire liability of GE for patent infringement by the Equipment or any part thereof.

Item 3: The Maximum Purchase Price referred to in Article 4 of this Agreement is \$60,000,000 plus the amount, if any, by which the Deposits of the institutional investors named in the Finance Agreement are increased pursuant to Paragraph 1 of the Finance Agreement.

SCHEDULE B

to

Conditional Sale Agreement

<u>Builder</u>	<u>Type</u>	<u>Builder's Specifications</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Estimated Unit Base Price</u>	<u>Estimated Total Base Price</u>	<u>Road Numbers (Inclusive)</u>	<u>Estimated Time and Place of Delivery</u>
General Motors Corporation (Electro-Motive Division)	2,300 h.p. Model GP-39-2 Diesel Electric Locomotives	EMD Specif. 8075 dated July 1977	La Grange, Illinois	10	\$650,000	\$ 6,500,000	3696 through 3705	April 1980; f.o.b. McCook, Illinois
PACCAR Inc	62' Insulated Box Cars AAR Mechanical Designation: XLI	PC-658 dated 8/1/79	Renton, Washington	54	79,630	4,300,020	AT-625378 through AT-625431	March 1980; Renton, Washington
PACCAR Inc	61' Insulated Box Cars AAR Mechanical Designation: XLI	PC-680 dated 3/26/79	Renton, Washington	300	72,000	21,600,000	AT-622800 through AT-623099	April-July 1980; Renton, Washington
Difco Inc.	77-ton, 50-cu. yd. Air Dump Gondola Cars AAR Mechanical Designation: MWD	Difco Drawing 8276-E dated 11/5/76	Findley, Ohio	30	60,000	1,800,000	AT-186230 through AT-186259	June-Aug., 1980; Findley, Ohio
Santa Fe Rail Equipment Co.	60' Plain Box Cars AAR Mechanical Designation: XF	AT&SF Ry. Specif. 2959	Topeka, Kansas	107	64,000	6,848,000	AT-612000 through AT-612106	Aug.-Dec., 1980; Topeka, Kansas
General Electric Company	3,000 h.p. Model C-30-7 Diesel Electric Locomotives	GE Specif. 3390G dated 1/15/79	Erie, Pennsylvania	24	791,667	19,000,000	8099 through 8122	May 1980; f.o.b. Builder's plant, Erie, Pennsylvania

\$60,048,020

CONDITIONAL SALE AGREEMENT

Dated as of March 1, 1980

Between Each of

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

and

PACCAR INC.,

and

DIFCO INC.,

and

SANTA FE RAIL EQUIPMENT CO.

and

GENERAL ELECTRIC COMPANY

and

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

12-1/4% Conditional Sale Indebtedness Due October 1, 1995

CONDITIONAL SALE AGREEMENT

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* This Table of Contents has been included in this document for convenience of reference only and does not form a part of or affect any construction or interpretation of this document.

sold hereunder) named in Item 1 of Schedule A hereto and any successor or successors for the time being to their respective manufacturing properties and businesses.

The rights and obligations of the Builders under this Agreement are several in accordance with their interests and not joint. Accordingly, whenever this Agreement, by the use of such designation as "the Vendor", "such Builder" or other similar term, confers a right or imposes an obligation upon any corporation named in Item 1 of Schedule A hereto or its successor, such right or obligation shall be construed to accrue to or to be enforceable against only the specific corporation furnishing the units of Equipment giving rise to such right or obligation and its successors as herein provided.

The term "Officer's Certificate" as used in this Agreement shall mean a certificate signed by the President, any Vice President, the Controller, the Secretary, the Treasurer or any Assistant Treasurer of the Railroad, and the term "Request" shall mean a written request for the action therein specified, delivered to the Vendor, dated not more than 10 days prior to the date of delivery to the Vendor and signed on behalf of the Railroad by the President, a Vice President, the Treasurer, any Assistant Treasurer, the Secretary, the Controller or any Assistant Secretary of the Railroad.

ARTICLE 2. Construction and Sale. Pursuant to this Agreement, each Builder shall construct or cause to be constructed the units of the Equipment to be constructed by it as described in Schedule B hereto (such units of Equipment with respect to such Builder being hereinafter called "its Equipment") at its plant described in said Schedule B and will sell and deliver to the Railroad, and the Railroad will purchase from such Builder and accept delivery of and pay for such Equipment, each unit of which shall be constructed in accordance with the specifications referred to in Schedule B hereto and in accordance with such modifications thereof as may be agreed upon in writing between such Builder and the Railroad (which specifications and modifications, if any, are called the "Specifications"). The design, quality and component parts of each unit of the Equipment shall conform, on the date of completion of manufacture of each thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards recommended by the

Association of American Railroads reasonably interpreted as being applicable to equipment of the character of such units of the Equipment and each unit of the Equipment will be new railroad equipment first put into service on or after March 1, 1980.

ARTICLE 3. Inspection and Delivery. Each Builder will deliver the units of its Equipment to the Railroad at the place or places specified in Schedule B hereto (or if said Schedule B does not specify a place or places, at the place or places designated from time to time by the Railroad), freight charges, if any, prepaid and for the account of the Railroad, in accordance with the delivery schedule set forth in Schedule B hereto; provided, however, that no Builder shall have any obligation to deliver any unit of Equipment hereunder (i) at any time after the commencement of any proceedings specified in clause (c) or (d) of Article 16 hereof, (ii) if any event of default (as described in said Article 16), or event which with the lapse of time and/or demand would constitute such an event of default, shall have occurred and be continuing, or (iii) following receipt of written notice from the Assignee that there has been since ~~December 31,~~^{SEPTEMBER 30} 1979, a material adverse change in the assets, liabilities, business or condition (financial or otherwise) of the Railroad and subsidiary companies until such time as such written notice may be canceled by a further written notice.

Each Builder's obligation as to time of delivery is subject, however, to delays resulting from causes beyond such Builder's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

Notwithstanding the preceding provisions of this Article 3, any Equipment not delivered, accepted and settled for pursuant to Article 4 hereof on or before December 31, 1980 (the "Cut-Off Date"), shall be excluded herefrom. If any unit or units of Equipment shall be excluded from this Agreement pursuant to the preceding sentence, the Builder or Builders of such unit or units and the Railroad shall execute an agreement supplemental hereto limiting this Agreement to the units of Equipment not so

excluded herefrom. If a Builder's failure to deliver Equipment so excluded from this Agreement resulted from one or more of the causes set forth in the immediately preceding paragraph, the Railroad shall nevertheless be obligated to accept such Equipment and pay the full purchase price therefor, determined as provided in the applicable Interim Document.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Railroad and each Builder shall grant to such authorized inspectors reasonable access to its plant. Each Builder agrees to inspect all materials used in the construction of its Equipment in accordance with the standard quality control practices of such Builder. Upon completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the Railroad for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Railroad shall execute and deliver to such Builder a certificate of acceptance (the "Certificate of Acceptance") stating that such unit or units have been inspected and accepted on behalf of the Railroad and are marked in accordance with Article 7 hereof; provided, however, that such Builder shall not thereby be relieved of its warranty referred to in Article 14 hereof.

On delivery of each such unit hereunder at the place specified for delivery, the Railroad will assume the responsibility and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of such unit.

ARTICLE 4. Purchase Price and Payment. The base price or prices per unit of the Equipment are set forth in Schedule B hereto. Such base price or prices are subject to such increase or decrease as is agreed to by the Builder thereof and the Railroad. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased.

If the aggregate Purchase Price of Equipment under this Agreement shall exceed the Maximum Purchase Price (as defined in Item 3 of Schedule A hereto), the

Builder or Builders (and any assignee of the Builders) and the Railroad, unless waived by the Railroad, will enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for and specified by the Railroad, as will, after giving effect to such exclusion, reduce the aggregate Purchase Price of the Equipment under this Agreement to not more than the Maximum Purchase Price, and the Railroad agrees to purchase any such unit or units so excluded from this Agreement from the Builder thereof for cash on the date such unit or units would otherwise have been settled for under this Agreement either directly or, in case the Railroad shall arrange therefor, by means of a conditional sale, equipment trust or other appropriate method of financing as the Railroad shall determine and shall be reasonably acceptable to such Builder.

For the purpose of making settlement, the Equipment of each Builder shall be divided into such number of groups of units of the Equipment, delivered to and accepted by the Railroad (a "Group"), as such Builder and the Railroad may agree to. The term "Closing Date" with respect to any Group of the Equipment shall mean such date (on or after March 26, 1980, and on or prior to the Cut-Off Date), not more than 30 days following presentation by the Builder of the Equipment in such Group to the Railroad of the invoice and the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Railroad by written notice delivered to the Vendor at least 5 business days prior to the Closing Date designated therein; provided, however, that the aggregate of the Invoiced Purchase Prices (as hereinafter defined) of all Equipment settled for pursuant to this Agreement on any Closing Date shall not exceed (y) the amount then on deposit with the Assignee pursuant to the Finance Agreement under which the Assignee is acting as agent for the institutional investors therein named plus (z) the amount payable by the Railroad pursuant to subparagraph (a) of the next paragraph of this Article 4.

The Railroad hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment,

as follows:

(a) on the Closing Date for each Group the amount, if any, by which (x) the Purchase Price of all units of the Equipment for which settlement has theretofore or is then being made, as stated in the invoice or invoices presented in respect of such Closing Date (said invoiced prices being herein called the "Invoiced Purchase Prices"), exceeds (y) the sum of the Maximum Purchase Price and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to this subparagraph (a); and

(b) in 15 consecutive equal annual installments, as hereinafter provided, an amount equal to the aggregate of the Invoiced Purchase Prices for all the Equipment less the amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph (the aggregate of said installments being hereinafter called the "CSA Indebtedness").

In the event that on any Closing Date the final Purchase Price of any Group has not been finally determined, the invoice presented may be for an estimated Purchase Price (as evidenced by the words "Interim Invoice" written on the face of such invoice), subject to adjustment upon determination of the final Purchase Price, and a supplemental invoice may be presented by the appropriate Builder at least 10 business days prior to any subsequent Closing Date for settlement on such subsequent Closing Date for any increase in the Purchase Price; it being agreed by such Builder that the estimated Purchase Price in any Interim Invoice presented by it shall be calculated in such manner that in no event shall such estimated Purchase Price be in excess of the final Purchase Price of such Group. If a supplemental invoice is presented to the Railroad by the Builder at least 10 business days prior to any subsequent Closing Date with respect to any Group of Equipment, such supplemental invoice shall be settled for at such subsequent Closing Date. If a supplemental invoice is presented to the Railroad by a Builder after, or less than 10 business days prior to, the Closing Date when all units of the Equipment of the Builder shall have been delivered, accepted and settled for, but prior to the Repayment Date (as defined in Paragraph 4 of the Finance Agreement), the Railroad shall designate a Closing Date with respect to

such supplemental invoice. If a supplemental invoice is presented by a Builder after the Repayment Date, it shall be paid in cash by the Railroad to such Builder in accordance with the terms of the original purchase order given by the Railroad and accepted by such Builder in respect of its Equipment.

The installments of the CSA Indebtedness payable pursuant to subparagraph (b) of the preceding paragraph of this Article 4 shall be payable annually on October 1, in each year commencing on October 1, 1981, to and including October 1, 1995, or, if any such date is not a business day, on the next business day. The unpaid portion of the CSA Indebtedness shall bear interest from the respective Closing Dates on which such indebtedness was incurred at the rate of 12-1/4% per annum. All such interest shall be payable, to the extent accrued, on April 1 and October 1 in each year, commencing October 1, 1980, or, if any such date is not a business day, on the next business day.

All interest under this Agreement shall be calculated on the basis of a 360-day year of 12 30-day months.

The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in Chicago, Illinois, or New York, New York, are authorized or obligated to remain closed.

The Railroad will pay, to the extent legally enforceable, interest at the rate of 13-1/4% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

Except as provided in Article 8 hereof, the Railroad shall not have the privilege of prepaying any installment of its indebtedness hereunder prior to the date it becomes due.

In the event the Vendor, pursuant to Article 15

hereof, assigns the right to receive the payments herein provided to be made by the Railroad, the assignee thereof may request the Railroad to make and the Railroad shall make such payments to it at such address as shall be supplied to the Railroad by the assignee.

ARTICLE 5. Taxes. All payments to be made by the Railroad hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, Federal or foreign taxes (other than net income, gross receipts [except gross receipts taxes in the nature of or in lieu of sales or use taxes], excess profits and similar taxes) or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called "impositions"), all of which impositions the Railroad assumes and agrees to pay on demand. The Railroad will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its interest therein and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the security interest of the Vendor or result in a lien upon any part of the Equipment; provided, however, that the Railroad shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the interest or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any such impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Railroad shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; provided, however, that the Railroad shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Railroad shall have approved the payment thereof.

ARTICLE 6. Security Interest in the Equipment.

The Vendor shall and hereby does retain a security interest in the Equipment until the Railroad shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as provided in this Agreement. Any and all additions to the Equipment that are not readily removable without damage to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 8 hereof, when and only when the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, shall have been paid, and all the Railroad's obligations herein contained shall have been performed by the Railroad, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Vendor. However, the Vendor, upon receipt of a Request at that time, will (a) execute a bill or bills of sale for the Equipment transferring and releasing its interest therein to the Railroad, or upon its order, free of all claims, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Railroad, (b) execute and deliver, for filing in all necessary public offices, such instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the release of the security interest of the Vendor in the Equipment and (c) pay to the Railroad any money paid to the Vendor pursuant to Article 8 hereof and not theretofore applied as therein provided. The Railroad hereby waives any and all rights in or to the payment of any penalty or damages for failure to execute and deliver such bill or bills of sale or instruments, except for failure to execute and deliver the same within a reasonable time after receipt of a Request.

ARTICLE 7. Marking of the Equipment.

The Railroad will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in Schedule B hereto, or in the case of Equipment not there

listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the words "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION" or other appropriate markings approved by the Vendor with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's interest in the Equipment and its rights under this Agreement. The Railroad will not place any such unit in operation or exercise any control or dominion over the same until such markings have been made thereon and will replace promptly any such markings which may be removed, defaced, obliterated or destroyed. The Railroad will not change the number of any unit of the Equipment except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor by the Railroad and filed, recorded and deposited by the Railroad in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Railroad will not allow the name of any person, firm, association or corporation to be placed on any of the Equipment as a designation which might be interpreted as a claim of ownership thereof by the Railroad or by any person, firm, association or corporation other than the Vendor; provided, however, that the Railroad may cause the Equipment to be lettered with the names or initials or other insignia of the Railroad or its affiliates.

ARTICLE 8. Casualty Occurrences; Insurance. In the event that any unit of the Equipment shall be worn out, lost, stolen, destroyed, irreparably damaged or otherwise rendered permanently unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise or the Purchase Price (or any portion thereof) of any unit shall have been refunded by a Builder pursuant to such Builder's patent indemnities therefor as set forth in Item 2 of Schedule A hereto (such occurrences being hereinafter called "Casualty Occurrences"), the Railroad shall promptly and fully inform the Vendor in regard thereto (after it has knowledge of such Casualty Occurrence). When the aggregate Casualty Value (as defined

herein) of all units having suffered a Casualty Occurrence (exclusive of units having suffered a Casualty Occurrence with respect to which a payment shall have been made to the Vendor pursuant to this Article 8) hereunder shall exceed \$250,000 (or such lesser amount as the Railroad may elect), the Railroad shall promptly pay to the Vendor a sum equal to the aggregate Casualty Value of such units of the Equipment as of the date of such payment and shall file with the Vendor an Officer's Certificate setting forth the Casualty Value of each unit of the Equipment suffering a Casualty Occurrence.

So long as no event of default shall have occurred and be continuing, any money paid to the Vendor pursuant to the preceding paragraph of this Article 8 shall be used, as the Railroad shall from time to time direct in a Request, in whole or in part, to prepay installments of CSA Indebtedness or toward the cost of a unit or units of new standard-gauge railroad equipment (other than passenger or work equipment) to replace units suffering a Casualty Occurrence; provided, however, that, if the amount (excluding amounts referred to in the immediately following proviso) paid to the Vendor pursuant to the preceding paragraph of this Article 8 and not theretofore applied toward the cost of replacement units exceeds \$4,000,000 at the due date of an annual installment of the CSA Indebtedness, such excess shall be applied on such date to prepay installments of the CSA Indebtedness; provided further, however, that the Railroad shall direct that any money paid to the Vendor in respect of Equipment which shall be worn out be applied only toward the cost of replacement units and not to prepay any installment of the CSA Indebtedness; provided further, however, that no caboose shall be included as a replacement unit if the Purchase Price thereof (together with the Purchase Price of all other cabooses constituting replacement units and included as Equipment hereunder) shall exceed 3% of the outstanding CSA Indebtedness at the date of such Request. In case any money is applied pursuant to this Article 8 to prepay indebtedness, it shall be accompanied by accrued interest on the amount prepaid and shall be so applied to reduce each installment of CSA Indebtedness thereafter falling due pro rata.

The "Casualty Value" of each unit of the Equipment (other than a replacement unit) shall be deemed to be that amount which bears the same ratio to the original Purchase Price thereof (less, in the event the Railroad

shall have made any payments under the provisions of subparagraph (a) of the third paragraph of Article 4 hereof, an amount which bears the same ratio to the aggregate of all such payments as the original Purchase Price of such unit bears to the original aggregate Purchase Price of all the Equipment) as the unpaid CSA Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) as of the date payment is made with respect to such Casualty Occurrence bears to the original CSA Indebtedness. The Casualty Value of each replacement unit shall be deemed to be that amount which bears the same ratio to the portion of the cost thereof paid by the Vendor as the unpaid CSA Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) as of the date payment is made with respect to such Casualty Occurrence bears to the unpaid CSA Indebtedness (without giving effect to any such prepayments) as of the date of acquisition by the Vendor of such replacement unit.

The Railroad will cause any replacement unit or units to be marked as provided in Article 7 hereof. Any and all such replacements units shall constitute accessions to the Equipment and shall be subject to all appropriate terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement; provided, however, that nothing herein shall result in any Builder having any liability or obligation pursuant to this Agreement with respect to any replacement unit or units not manufactured by it. Title to all such replacement units shall be free and clear of all liens and encumbrances except the liens permitted by the second paragraph of Article 12 hereof and shall be taken initially and shall remain in the name of the Vendor subject to the provisions hereof, and the Railroad shall execute, acknowledge, deliver, file, record or deposit all such documents (including the filing of a supplement to this Agreement with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303) and do any and all such acts as may be necessary to cause such replacement units to come under and be subject to this Agreement. All such replacement units shall be guaranteed and warranted in like manner as is customary at the time for similar equipment.

Whenever the Railroad shall deliver a Request to apply amounts toward the cost of any replacement unit or

units, the Railroad shall also deliver therewith bills of sale, invoices and certificates of acceptance, substantially in the form provided by the Assignment, together with an opinion of counsel for the Railroad that the Vendor has a valid and perfected security interest in each such replacement unit, free and clear from all claims, liens, security interests and other encumbrances except the rights of the Railroad under this Agreement, that each such unit has come under and become subject to this Agreement and that an appropriate supplement to this Agreement has been executed and filed with the Interstate Commerce Commission as required by the next preceding paragraph hereof.

In order to facilitate the sale or other disposition of any Equipment suffering a Casualty Occurrence, the Vendor shall, upon Request, after payment by the Railroad of a sum equal to the Casualty Value of such Equipment, execute and deliver to the Railroad or the Railroad's assignee or nominee, a bill of sale (without warranties) for such Equipment, and such other documents as may be required to release such Equipment from the terms and scope of this Agreement, in such form as may be reasonably requested by the Railroad.

So long as no event of default shall have occurred and be continuing, any money paid to the Vendor pursuant to this Article 8 shall, if the Railroad shall direct, be invested, pending its application as hereinabove provided, in such of the following as may be specified by the Railroad: (i) direct obligations of the United States of America or obligations for which the full faith and credit of the United States is pledged to provide for the payment of principal and interest, (ii) open market commercial paper rated A-1 or A-2 by Standard & Poor's Corporation or prime-1 or prime-2 by NCO/Moody's Commercial Paper Division of Moody's Investors Service, Inc., or the successor of either of them, or (iii) certificates of deposit of domestic commercial banks in the United States of America having total capital and surplus in excess of \$100,000,000, in each case maturing in not more than one year from the date of such investment (such investments being herein called "Investments"). Any such Investments shall from time to time be sold and the proceeds reinvested in such Investments as the Railroad may in a Request direct. Any interest received by the Vendor on any Investments shall be held by the Vendor and applied as hereinafter provided. Upon any sale or the maturity of any Invest-

ments, the proceeds thereof, plus any interest received by the Vendor thereon, up to the cost (including accrued interest) thereof, shall be held by the Vendor for application pursuant to this Article 8, and any excess shall be paid to the Railroad. If such proceeds (plus such interest) shall be less than such cost, the Railroad will promptly pay to the Vendor an amount equal to such deficiency. The Railroad will pay all expenses incurred by the Vendor in connection with the purchase and sale of Investments.

If any unit of the Equipment is removed for repairs other than running repairs or becomes unsuitable or not necessary for continued use by the Railroad in its business or operations, such occurrence shall, upon the election of the Railroad evidenced by a Request, constitute a Casualty Occurrence subject to the provisions of this Article 8; provided, however, that the Railroad shall direct any money paid to the Vendor in respect thereof to be applied only toward the cost of replacement units and not to prepay any installment of CSA Indebtedness.

Notwithstanding anything to the contrary contained in this Article 8, if one or more events of default shall have occurred and be continuing, all money held by the Vendor pursuant to this Article 8 (including, for this purpose, Investments) shall be applied by the Vendor as if such money were money received upon the sale of Equipment pursuant to Article 17 hereof.

The Railroad will at all times, at its own expense, cause to be carried and maintained property and casualty insurance in respect of the Equipment, and public liability insurance, in amounts and against risks customarily insured against (taking into account self-insurance) by the Railroad in respect of similar equipment owned by it.

ARTICLE 9. Maintenance; Compliance with Laws and Rules. The Railroad agrees that, at its own cost and expense, it will maintain and keep the Equipment in good operating order, repair and condition, ordinary wear and tear excepted, and eligible (in the case of Equipment other than locomotives) for railroad interchange in accordance with the interchange rules of the Association of American Railroads or other applicable regulatory body.

During the term of this Agreement, the Railroad will at all times comply in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all laws of the jurisdictions in which its operations involving the Equipment may extend, with the Interchange Rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration or replacement of or addition to any part on any unit of the Equipment, the Railroad will conform therewith, at its own expense; provided, however, that the Railroad may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor (if the Vendor shall at any time so advise the Railroad), adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 10. Reports and Inspections. On or before April 1 in each year, commencing with the year 1981, the Railroad shall furnish to the Vendor an Officer's Certificate (a) setting forth as at the preceding December 31 the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding 12 months (or since the date of this Agreement in the case of the first such statement) or that have been withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 7 hereof have been preserved or replaced. The Vendor shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

ARTICLE 11. Possession and Use. The Railroad, so long as an event of default shall not have occurred and be continuing hereunder, shall be entitled, from and after delivery of units of the Equipment by the Builder thereof to the Railroad, to the possession of such units of Equip-

ment and the use thereof upon the lines of railroad owned or operated by it either alone or jointly with others and whether under lease or otherwise, or upon the lines of railroad owned or operated by any railroad company controlled by, or under common control with, the Railroad, or over which it has trackage rights, or upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, and may enter into a written lease of one or more units of the Equipment for a term not exceeding six months with any affiliate or any other solvent railroad company incorporated in the United States of America (or any state thereof or the District of Columbia), but only upon and subject to all the terms and conditions of this Agreement; provided, however, that any such lease permitted hereunder shall state expressly that the rights of the lessee thereunder are subject and subordinate to the rights and remedies of the Vendor under this Agreement; and, provided, further, however, that neither the Railroad nor any such lessee shall be entitled to assign the Equipment for use or service outside of the United States of America except in normal interchange.

Any such lease may provide that the lessee, so long as it shall not be in default under such lease, shall be entitled to the possession of the Equipment included in such lease and the use thereof subject to the rights and remedies of the Vendor in respect of the Equipment covered by such lease upon the occurrence of an event of default hereunder; and, subject to the provisions of Article 7 hereof, may provide for lettering or marking upon such Equipment for convenience of identification of the leasehold interest of such lessee therein. A copy of the form of each lease (and of each amendment thereto, if any) shall promptly be filed with the Vendor.

ARTICLE 12. Prohibition Against Liens. The Railroad will pay or discharge any and all sums claimed by any party from, through or under the Railroad or its successors or assigns which, if unpaid, might become a lien, charge or security interest on or in the Equipment, or any unit thereof, equal or superior to the Vendor's interest therein; provided, however, that the Railroad shall be under no obligation to pay or discharge any such claim so long as it is contesting in good faith and by appropriate legal proceedings such claim and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor in or to the

Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

ARTICLE 13. Railroad's Indemnities. The Railroad will indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of retention by the Vendor of a security interest in the Equipment, the use and operation thereof by the Railroad during the period when said security interest remains in the Vendor or the transfer of said security interest in the Equipment by the Vendor pursuant to any of the provisions of this Agreement.

ARTICLE 14. Patent Indemnities; Builder's Warranty of Material and Workmanship. Each Builder's indemnities with respect to patent infringement, its warranty of material and workmanship and the limitations of its liability with regard thereto and certain agreements of the Railroad are set forth in Item 2 of Schedule A hereto.

ARTICLE 15. Assignments. The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Vendor. A sale, assignment, transfer or disposition to a solvent, Class 1 railroad company organized under the laws of the United States of America or any of the states thereof which shall acquire all or substantially all the lines of railroad of the Railroad, and which, by execution of an appropriate instrument satisfactory to the Vendor, shall assume and agree to perform each of, and all, the obligations and covenants of the Railroad under this Agreement, shall not be deemed a breach of this covenant and thereupon, the successor railroad company shall be for all

purposes the "Railroad" hereunder.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Railroad, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve any Builder from, any of the obligations of such Builder to construct and deliver the Equipment in accordance with this Agreement or to respond to its warranties and indemnities contained or referred to in Article 14 hereof and Schedule A hereto, or relieve the Railroad of any of its obligations to such Builder under Articles 2, 3, 4, 5, 13 and 14 hereof, Schedule A hereto and this Article 15 or of any other obligation which, according to its terms or context, is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to the Railroad, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall by virtue of such assignment acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Railroad of the notification of any such assignment, all payments thereafter to be made by the Railroad under this Agreement to the Vendor shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

The Railroad recognizes that it is the custom of railroad equipment manufacturers to assign conditional sale agreements and understands that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Railroad represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder and for the purpose of inducing such acquisition, that, in the event of such assignment, the rights of such assignee to the entire unpaid indebtedness in respect of the Purchase Price or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense,

setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of any Builder with respect to its Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by a Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against the respective Builders.

The Railroad will (a) in connection with each settlement for the Equipment subsequent to such assignment, deliver to the assignee, at least five business days prior to the Closing Date for the Group fixed in the notice by the Railroad, all documents required by the terms of such assignment to be delivered to such assignee in connection with such settlement, in such number of counterparts or copies as may reasonably be requested, except for any opinion of counsel for such assignee, and (b) furnish to such assignee such number of counterparts of any other certificate or document required by the Vendor as may reasonably be requested.

If this Agreement shall have been assigned by the Builders and the assignee shall not make payment to a Builder with respect to units of the Equipment of such Builder as provided in the instrument making such assignment, such Builder will promptly notify the Railroad of such event and, if such amount shall not have been previously paid by such assignee, the Railroad will, not later than 60 days after the date such payment was due, pay the full purchase price therefor, determined as provided in this Agreement (together with interest from the day such payment was due to the date of payment by the Railroad at the highest prime rate of interest charged by any of the four New York City banks having the largest total assets in effect on the date such payment was due), such payment to be made in cash after the delivery of such Equipment, either directly, or, in case the Railroad shall arrange therefor, by means of a conditional sale agreement, equipment trust or such other appropriate method of financing as the Railroad shall determine and as shall be reasonably acceptable to such Builder.

ARTICLE 16. Defaults. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) the Railroad shall fail to pay in full any indebtedness in respect of the Purchase Price of the Equipment as provided in this Agreement or shall fail to pay in full any other sum payable by the Railroad as provided in this Agreement within five days after the same shall have become due and payable; or

(b) the Railroad shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Equipment on its part to be kept or performed or to make provision satisfactory to the Vendor for such compliance; or

(c) a petition for reorganization under Title 11 of the United States Code, as now constituted or hereafter amended, shall be filed by or against the Railroad and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been and shall not continue to be duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees, within 60 days after such petition shall have been filed and otherwise in accordance with the provisions of 11 U.S.C. § 1168, and successor provision, as the same may be hereafter amended; or

(d) any other proceedings shall be commenced by or against the Railroad for any relief which includes, or might result in, any modification of the obligation of the Railroad hereunder under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffec-

tiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been and shall not continue to be duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Railroad or for its property in connection with any such proceedings in such manner that such obligations have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have been commenced; or

(e) the Railroad shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Railroad and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Vendor, declare (hereinafter called a "Declaration of Default") the entire indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. The Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Railroad wherever situated. The Railroad shall promptly notify the Vendor in writing of any event which has come to its attention which constitutes, or which with the giving of notice and/or lapse of time could constitute, an event of default hereunder and of what action, if any, the Railroad has taken or proposes to take to remedy such event of default or event.

The Vendor may at its election waive any such event of default and its consequences and rescind and annul any Declaration of Default by notice to the Railroad in

writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default had been made. Notwithstanding the provisions of this paragraph, it is agreed by the Railroad that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 17. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may, subject to compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken by its agent or agents immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Railroad or any other person and for such purpose may enter upon the Railroad's premises or any other premises where the Equipment may be located (without judicial process if this can be done without breach of the peace) and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Railroad.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall reasonably designate a point or points upon the premises of the Railroad for the delivery of the Equipment to the Vendor, the Railroad shall, at its own expense, forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any part of the Equipment has been interchanged or leased to return the Equipment so interchanged or leased), cause (a) the Equipment to be moved to such point or points on its lines as shall be designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor and (b) the Equipment to be moved to such interchange point or points of the Railroad as shall be designated by the Vendor upon any sale, lease or other disposal of all or any part of the Equipment by the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines or premises of the Railroad

until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish, without charge for rent, storage or insurance (which the Railroad agrees to maintain as herein provided), the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Railroad, to provide proper maintenance for the Equipment during such storage and to permit inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Railroad requiring specific performance hereof. The Railroad hereby waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 17 provided) may at its election and upon such notice as is hereinafter set forth retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Railroad by telegram or registered mail, addressed as provided in Article 21 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Railroad's rights in the Equipment shall thereupon terminate and all payments made by the Railroad may be retained by the Vendor as compensation for the use of the Equipment by the Railroad; provided, however, that if the Railroad, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor

in retaking possession of, removing and storing the Equipment and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad; provided, further, that if the Railroad or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Railroad and to any other persons to whom the law may require notice of the time and place, may sell the Equipment, or any unit thereof, free from any and all claims of the Railroad or any other party claiming from, through or under the Railroad, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Railroad should tender full payment of the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad. The proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at

such place or places and at such time or times as the Vendor may specify, in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine. The Vendor or the Railroad may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Railroad shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed to the Railroad as provided in Article 21 hereof. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 offerees have been solicited in writing to submit bids), it shall be subject to the right of the Railroad to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Railroad (except to the extent of surplus money received as hereinafter provided in this Article 17), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of the sums due to the Vendor from the Railroad hereunder. From and after the date of any such sale, the Railroad shall pay to the Vendor the per diem interchange for each unit of Equipment which shall not have been assembled, as hereinabove provided, by the date of such sale for each day from the date of such sale to the date of delivery to the purchaser at such sale.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly

granted to the Railroad shall not otherwise alter or affect the Vendor's rights or the Railroad's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Railroad's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Railroad shall pay the amount of such deficiency to the Vendor upon demand, together with interest from the date of such demand to the date of payment by the Railroad at the rate per annum set forth in Article 4 hereof applicable to amounts remaining unpaid after becoming due and payable. If the Railroad shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Railroad.

The Railroad will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including attorneys' fees, if any, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 18. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Railroad to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Railroad, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment or any unit thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 19. Recording. The Railroad will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303; and the Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit, record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its interest in the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement.

The Railroad will promptly furnish to the Vendor evidence of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Railroad with respect thereto satisfactory to the Vendor.

ARTICLE 20. Payment of Expenses. The Railroad will pay all reasonable costs and expenses (other than the fees and expenses of counsel for the Builders) incident to this Agreement and the first assignment of this Agreement (including the fees and expenses of an agent, if the first assignee is an agent), and any instrument supplemental or related hereto or thereto, including all fees and expenses of Messrs. Cravath, Swaine & Moore, special counsel for the first assignee of this Agreement and for any party acquiring interests in such first assignment, and all reasonable costs and expenses in connection with the transfer by any party of interests acquired in such first assignment, but excluding all fees and expenses of any other counsel for such parties.

ARTICLE 21. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at its chief

place of business at the following specified addresses:

(a) to the Railroad, at 80 East Jackson Boulevard, Chicago, Illinois 60604, Attention of Vice President-Finance,

(b) to a Builder, at its address specified in Item 1 of Schedule A hereto, and

(c) to any assignee of the Vendor or of the Railroad, at such address as may have been furnished in writing to each of the other parties hereto by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 22. Article Headings; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including the Schedules hereto, exclusively states the rights of the Vendor and the Railroad with respect to the Equipment and supersedes all other agreements, oral or written (including the Interim Documents), with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Vendor and the Railroad.

ARTICLE 23. Law Governing. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred pursuant to 49 U.S.C. § 11303, and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the marking of the units of Equipment provided for in Article 7 hereof.

ARTICLE 24. Execution. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. It shall not be necessary that any counterpart be signed by all the parties so long as the Railroad and each Builder has executed and delivered a counterpart to the other, whereupon this Agreement shall become effective with respect to the Railroad and such Builder. Each Builder shall be bound hereunder notwithstanding the failure of any other Builder to execute and deliver this Agreement or to perform its obligations hereunder. Although this Agreement is dated, for convenience, as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by their officers or other persons, thereunto duly authorized, and their respective corporate seals to be hereunto affixed, duly attested, all as of the date first above written.

THE ATCHISON, TOPEKA AND
SANTA FE RAILWAY COMPANY,

[Corporate Seal]

by

Vice President

Attest:

Assistant Secretary

GENERAL MOTORS CORPORATION,
(Electro-Motive Division),

[Corporate Seal]

by

Vice President

Attest:

Assistant Secretary

PACCAR INC.,

[Corporate Seal]

by

Vice President

Attest:

Secretary

DIFCO INC.,

[Corporate Seal]

by

Frank F. Flowers
Vice President

Attest:

Mary Schindler
Asst. Secretary

SANTA FE RAIL EQUIPMENT CO.,

[Corporate Seal]

by

President

Attest:

Secretary

GENERAL ELECTRIC COMPANY,

[Corporate Seal]

by

Attest:

Attesting Secretary

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this day of March 1980, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

STATE OF ILLINOIS,))
COUNTY OF COOK,) ss.:

On this day of March 1980, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (Electro-Motive Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

STATE OF WASHINGTON,)
) ss.:
COUNTY OF KING,)

On this day of March 1980, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of PACCAR INC, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

STATE OF OHIO,)
) ss.:
COUNTY OF HANCOCK,)

On this 25th day of March 1980, before me personally appeared FRED F. FLOWERS, to me personally known, who, being by me duly sworn, says that he is a Vice President of DIFCO INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public
Exp 7-9-82

[Notarial Seal]

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this day of March 1980, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is the President of SANTA FE RAIL EQUIPMENT CO., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

COMMONWEALTH OF PENNSYLVANIA,)
) ss.:
COUNTY OF EIRE,)

On this day of March 1980, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is of GENERAL ELECTRIC COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

SCHEDULE A

to

Conditional Sale Agreement

- Item 1. (a) General Motors Corporation (Electro-Motive Division), a Delaware corporation, La Grange, Illinois 60525.
- (b) PACCAR Inc, a Delaware corporation, 1400 North 4th Street, Renton, Washington 98055, with a copy to General Counsel, PACCAR Inc, P. O. Box 1518, Bellevue, Washington 98009.
- (c) Difco Inc., an Ohio corporation, Differential Avenue, Findlay, Ohio 45840.
- (d) Santa Fe Rail Equipment Co., a Delaware corporation, 109 West Ninth Street, Topeka, Kansas 66628.
- (e) General Electric Company, a New York corporation, 2901 East Lake Road, Erie, Pennsylvania 16531.
- Item 2. (a) GM Warranty. General Motors Corporation ("GM") warrants that the Equipment manufactured by it hereunder is of the kind and quality described in, and will be built in accordance with, the Specifications referred to in Article 2 of this Agreement and is suitable for the ordinary purposes for which such Equipment is used and warrants each unit of such Equipment to be free from defects in material and workmanship which may develop under normal use and service within two years from date of delivery of such unit or before such unit has been operated 250,000 miles, whichever event shall first occur. GM agrees to correct such defects, which examination shall disclose to GM's satisfaction to be defective, by repair or replacement F.O.B. factory and such correction shall constitute fulfillment of GM's obligation with respect to such defect under this warranty. GM warrants specialties not of its own specification or design to the same extent that

the suppliers of such specialties warrant such items to GM. GM further agrees with the Railroad that neither the inspection as provided in Article 3 of this Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or modification by the Railroad of any of its rights under this Item 2(a).

THERE ARE NO WARRANTIES WITH RESPECT TO MATERIAL AND WORKMANSHIP, EXPRESSED OR IMPLIED, MADE BY GM EXCEPT THE WARRANTIES SET OUT ABOVE.

GM Patent Indemnification. GM shall defend any suit or proceeding brought against the Railroad and/or each assignee of GM's rights under this Agreement so far as the same is based on a claim that the Equipment of GM's specification, or any part thereof, furnished under this Agreement constitutes an infringement of any patent, if notified promptly in writing and given authority, information and assistance (at GM's expense) for the defense of same, and GM shall pay all damages and costs awarded therein against the Railroad or any such assignee.

In case any unit of such Equipment, or any part thereof, is in such suit held to constitute infringement and the use of such unit or part is enjoined, GM shall at its option and at its own expense either procure for the Railroad and any such assignee the right to continue using such unit or part, or replace the same with noninfringing equipment subject to this Agreement, or modify it so it becomes noninfringing, or remove such unit and refund the Purchase Price and the transportation and installations costs thereof. If the Purchase Price is so refunded, such refund shall be made to the assignee of GM's rights under this Agreement if this Agreement has been so assigned. GM will assume no liability for patent infringement by reason of purchase, manufacture, sale or use of devices not included in and covered by its specification. The foregoing states the entire liability of GM for patent infringement by the Equipment or any part thereof.

(b) PACCAR Warranty. PACCAR Inc ("PACCAR") warrants that its Equipment will be built in accordance with the requirements, specifications and standards set forth or referred to in Article 2 of this Agreement and, except in cases of articles and materials specified by the Railroad and not manufactured by PACCAR, warrants its Equipment to be free from defects in material and workmanship under normal use and service, the liability of PACCAR under this warranty being limited, as the Railroad may elect: (i) to repair the defects at PACCAR's plant; or (ii) to replacement of a defective part; or (iii) to the cost of repair or replacement according to the AAR Code of Rules Governing Condition of and Repairs to Freight and Passenger Cars with Interchange of Traffic. PACCAR shall be given reasonable opportunity to verify any claim of defects in workmanship or materials.

The foregoing warranty of PACCAR shall begin at the time of delivery of a unit of its Equipment to the Railroad and terminate two years after such delivery. PACCAR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. The Railroad's rights under the foregoing warranty shall be its sole and exclusive remedy and PACCAR will have no liability for lost profit or for indirect, incidental, consequential or commercial losses. This warranty is expressly in lieu of all other warranties expressed or implied on the part of PACCAR, except for the patent indemnification included in this Item 2(b), and PACCAR neither assumes nor authorizes any person to assume for it any other warranty liability in connection with the construction and delivery of its Equipment, except as aforesaid.

PACCAR further agrees with the Railroad that neither the inspection as provided in Article 3 of this Agreement, nor any examination, nor the acceptance of any units of its Equipment as provided in said Article 3 shall be deemed a waiver or modification by the Railroad of any of its rights under this Item 2(b).

PACCAR Patent Indemnification. Except in cases

of articles or materials specified by the Railroad and not manufactured by PACCAR and in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed by PACCAR, PACCAR agrees to indemnify, protect and hold harmless the Railroad from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Railroad, its assigns or the users of its Equipment because of the use in or about the construction or operation of any of its equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Railroad likewise will indemnify, protect and hold harmless the Vendor from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor because of the use in or about the construction or operation of any of its Equipment of any article or material specified by the Railroad and not manufactured by PACCAR or of any design, system, process, formula or combination specified by the Railroad and not developed or purported to be developed by PACCAR which infringes or is claimed to infringe on any patent or other right. PACCAR agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Railroad every claim, right and cause of action which PACCAR has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Railroad and purchased or otherwise acquired by PACCAR for use in or about the construction or operation of any of its Equipment on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. PACCAR further agrees to execute and deliver to the Railroad or the users of its Equipment all and every such further assurance as may be reasonably requested by the

Railroad more fully to effectuate the assignment and delivery of every such claim, right and cause of action. PACCAR will give notice to the Railroad of any claim known to PACCAR from which liability may be charged against the Railroad hereunder and the Railroad will give notice to PACCAR of any claim known to the Railroad from which liability may be charged against PACCAR hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, the satisfaction and discharge of this Agreement or the termination of this Agreement in any manner.

(c) Difco Warranty. Difco Inc. ("Difco") warrants that its Equipment will be built in accordance with the requirements, specifications and standards set forth or referred to in Article 2 of this Agreement and, except in cases of articles and materials specified by the Railroad and not manufactured by Difco, warrants its Equipment to be free from defects in material and workmanship under normal use and service, the liability of Difco under this warranty being limited, as the Railroad may elect: (i) to repair the defects at Difco's plant; or (ii) to replacement of a defective part; or (iii) to the cost of repair or replacement according to the AAR Code of Rules Governing Condition of and Repairs to Freight and Passenger Cars with Interchange of Traffic. Difco shall be given reasonable opportunity to verify any claim of defects in workmanship or materials.

The foregoing warranty of Difco shall begin at the time of delivery of a unit of its Equipment to the Railroad and terminate two years after such delivery. DIFCO MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. The Railroad's rights under the foregoing warranty shall be its sole and exclusive remedy and Difco will have no liability for lost profit or for indirect, incidental, consequential or commercial losses. This warranty is expressly in lieu of all other warranties expressed or implied on the part of Difco, except for the patent indemnification included in this Item 2(c), and Difco

neither assumes nor authorizes any person to assume for it any other warranty liability in connection with the construction and delivery of its Equipment, except as aforesaid.

Difco further agrees with the Railroad that neither the inspection as provided in Article 3 of this Agreement, nor any examination, nor the acceptance of any units of its Equipment as provided in said Article 3 shall be deemed a waiver or modification by the Railroad of any of its rights under this Item 2(c).

Difco Patent Indemnification. Except in cases of articles or materials specified by the Railroad and not manufactured by Difco and in the case of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed by Difco, Difco agrees to indemnify, protect and hold harmless the Railroad from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Railroad, its assigns or the users of its Equipment because of the use in or about the construction or operation of any of its equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Railroad likewise will indemnify, protect and hold harmless the Vendor from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor because of the use in or about the construction or operation of any of its Equipment of any article or material specified by the Railroad and not manufactured by Difco or of any design, system, process, formula or combination specified by the Railroad and not developed or purported to be developed by Difco which infringes or is claimed to infringe on any patent or other right. Difco agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Railroad every

claim, right and cause of action which Difco has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Railroad and purchased or otherwise acquired by Difco for use in or about the construction or operation of any of its Equipment on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. Difco further agrees to execute and deliver to the Railroad or the users of its Equipment all and every such further assurance as may be reasonably requested by the Railroad more fully to effectuate the assignment and delivery of every such claim, right and cause of action. Difco will give notice to the Railroad of any claim known to Difco from which liability may be charged against the Railroad hereunder and the Railroad will give notice to Difco of any claim known to the Railroad from which liability may be charged against Difco hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, the satisfaction and discharge of this Agreement or the termination of this Agreement in any manner.

The Railroad, for the benefit of any assignee of Difco pursuant to the Assignment (or otherwise), for value received, hereby unconditionally guarantees to such assignee the due and punctual performance of all obligations of Difco under the Assignment (or any such other assignment) and under its warranty and patent indemnification set forth above.

(d) Santa Fe Warranty. Santa Fe Rail Equipment Co. ("Santa Fe Rail") warrants that its Equipment will be built in accordance with the requirements, specifications and standards set forth or referred to in Article 2 of this Agreement and, except in cases of articles and materials specified by the Railroad and not manufactured by Santa Fe Rail, warrants its Equipment to be free from defects in material and workmanship under normal use and

service, the liability of Santa Fe Rail under this warranty being limited, as the Railroad may elect: (i) to repair the defects at Santa Fe Rail's plant; or (ii) to replacement of a defective part; or (iii) to the cost of repair or replacement according to the AAR Code of Rules Governing Condition of and Repairs to Freight and Passenger Cars with Interchange of Traffic. Santa Fe Rail shall be given reasonable opportunity to verify any claim of defects in workmanship or materials.

The foregoing warranty of Santa Fe Rail shall begin at the time of delivery of a unit of its Equipment to the Railroad and terminate two years after such delivery. SANTA FE RAIL MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. The Railroad's rights under the foregoing warranty shall be its sole and exclusive remedy and Santa Fe Rail will have no liability for lost profit or for indirect, incidental, consequential or commercial losses. This warranty is expressly in lieu of all other warranties expressed or implied on the part of Santa Fe Rail, except for the patent indemnification included in this Item 2(d), and Santa Fe Rail neither assumes nor authorizes any person to assume for it any other warranty liability in connection with the construction and delivery of its Equipment, except as aforesaid.

Santa Fe Rail further agrees with the Railroad that neither the inspection as provided in Article 3 of this Agreement, nor any examination, nor the acceptance of any units of its Equipment as provided in said Article 3 shall be deemed a waiver or modification by the Railroad of any of its rights under this Item 2(d).

Santa Fe Rail Patent Indemnification. Except in cases of articles or materials specified by the Railroad and not manufactured by Santa Fe Rail and in the cases of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed by Santa Fe Rail, Santa Fe Rail agrees to indemnify, protect and hold harmless the Railroad from and against any and all liability, claims, costs,

charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Railroad, its assigns or the users of its Equipment because of the use in or about the construction or operation of any of its equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Railroad likewise will indemnify, protect and hold harmless the Vendor from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor because of the use in or about the construction or operation of any of its Equipment of any article or material specified by the Railroad and not manufactured by Santa Fe Rail or of any design, system, process, formula or combination specified by the Railroad and not developed or purported to be developed by Santa Fe Rail which infringes or is claimed to infringe on any patent or other right. Santa Fe Rail agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Railroad every claim, right and cause of action which Santa Fe Rail has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Railroad and purchased or otherwise acquired by Santa Fe Rail for use in or about the construction or operation of any of its Equipment on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. Santa Fe Rail further agrees to execute and deliver to the Railroad or the users of its Equipment all and every such further assurance as may be reasonably requested by the Railroad more fully to effectuate the assignment and delivery of every such claim, right and cause of action. Santa Fe Rail will give notice to the Railroad of any claim known to Santa Fe Rail from which liability may be charged against the Railroad hereunder and the Railroad will give notice to

Santa Fe Rail of any claim known to the Railroad from which liability may be charged against Santa Fe Rail hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, the satisfaction and discharge of this Agreement or the termination of this Agreement in any manner.

The Railroad, for the benefit of any assignee of Santa Fe Rail pursuant to the Assignment (or otherwise), for value received, hereby unconditionally guarantees to such assignee the due and punctual performance of all obligations of Santa Fe Rail under the Assignment (or any such other assignment) and under its warranty and patent indemnification set forth above.

(e) GE Warranty. GE warrants to the Railroad that each unit of Equipment manufactured by it hereunder will be free from defects in material, workmanship and title under normal use and service, and will be of the kind and quality designated or described in the Specifications referred to in Article 2 of this Agreement. The foregoing warranty is exclusive and in lieu of all other warranties, whether written, oral, implied or statutory (except as to title). NO WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR PURPOSE SHALL APPLY. If it appears within two years from the date of shipment by GE, or within 250,000 miles of operation, whichever event shall first occur, that any unit of the Equipment does not meet the warranties specified above, and the Railroad or its agent notifies GE promptly, GE, after verification as to condition and usage, shall correct any defect including nonconformance with the Specifications, at its option, either by repairing any defective part or parts made available to GE, or by making available at GE's plant or warehouse a repaired or replacement part. If requested by GE, the Railroad will ship the defective part or parts, with shipping charges prepaid, to the plant or warehouse designated by GE.

The liability of GE to the Railroad (except as to

title) arising out of the supplying of any unit of Equipment hereunder, or its use, whether on warranty, contract or negligence, shall not in any case exceed the cost of correcting defects in the Equipment as herein provided, and upon the expiration of the warranty period specified above, all such liability shall terminate. GE shall have no liability for any unit of Equipment or part thereof which becomes defective by reason of improper storage or application, misuse, negligence, accident or improper operation, maintenance, repairs or alterations on the part of the Railroad, or any third party other than GE. The foregoing shall constitute the sole remedy of the Railroad and the sole liability of GE.

It is understood that GE has the right to make any changes in design and add improvements to equipment at any time without incurring any obligations to install, at GE's expense, the same on other equipment sold by GE.

THERE ARE NO WARRANTIES WITH RESPECT TO MATERIAL AND WORKMANSHIP, EXPRESS OR IMPLIED, MADE BY GE EXCEPT THE WARRANTIES SET OUT ABOVE.

GE further agrees with the Railroad that neither the inspection as provided in Article 3 of this Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Railroad of any of its rights under this Item 2. In no event, whether as a result of breach of contract, warranty, tort (including negligence) or otherwise, shall GE or its suppliers be liable for any special, consequential, incidental or penal damages including, but not limited to, loss of profit or revenues, loss of use of the products or any associated equipment, damage to associated equipment, cost of capital, cost of substitute products, facilities, services or replacement power, downtime costs, or claims of the Railroad's customers for such damages. If the Railroad transfers title to or leases the products hereunder to any third party (other than as permitted by this Agreement), the Railroad shall obtain from such third party a provision affording

GE and its suppliers the protection of the preceding sentence.

In no event, whether as a result of breach of contract, warranty, tort (including negligence) or otherwise, shall GE's liability to the Railroad for any loss or damage arising out of, or resulting from this agreement, or from its performance or breach, or from the productions or services furnished hereunder, exceed the price of the specific product or service which gives rise to the claim. Except as to title any such liability shall terminate upon the expiration of the warranty period specified below. If GE furnishes the Railroad with advice or other assistance which concerns any product supplied hereunder or any system or equipment in which any such product may be installed and which is not required pursuant to this agreement, the furnishing of such advice or assistance will not subject GE to any liability, whether in contract, warranty, tort (including negligence) or otherwise.

The invalidity, in whole or in part, of any of the foregoing paragraphs will not affect the remainder of such paragraph or any other paragraph in this paragraph (e).

GE Patent Indemnification. Except in cases of designs specified by the Railroad and not developed or purported to be developed by GE, and articles and materials specified by the Railroad and not manufactured by GE, GE warrants that the Equipment furnished hereunder, and any part thereof, shall be delivered free of any rightful claim of any third party for infringement of any United States patent. If notified promptly in writing and given authority, information and assistance, GE shall defend, or may settle, at its expense, any suit or proceeding against the Railroad so far as based on a claimed infringement which would result in a breach of this warranty and GE shall pay all damages and costs awarded therein against the Railroad due to such breach. In case any equipment or part thereof is in such suit or proceeding found to constitute such an infringement and the use of such Equipment or

part thereof is enjoined, GE shall, at its expense and option, either procure for the Railroad the right to continue using said equipment or part thereof, or replace same within six months of such injunction with noninfringing Equipment or part thereof acceptable to the Railroad, or modify same so it becomes noninfringing, or remove the Equipment or part thereof and refund the Purchase Price (less reasonable depreciation for any period of use) and any transportation costs separately paid by the Railroad, but in each case without impairing the operational capability of such Equipment. (If the Purchase Price is so refunded, such refund shall be made to the assignee of GE's rights under this Agreement if this Agreement has been so assigned.) The preceding shall not apply to the use of any Equipment or part thereof furnished hereunder in conjunction with any other product in a combination not furnished by GE as a part of this transaction. As to any such combination, GE assumes no liability whatsoever for patent infringement and the Railroad will hold GE harmless against any infringement claims arising therefrom. GE will give notice to the Railroad of any claim known to GE from which liability may be charged against the Railroad hereunder and the Railroad will give notice to GE of any claim known to them from which liability may be charged against GE hereunder.

The foregoing states the entire liability of GE for patent infringement by the Equipment or any part thereof.

Item 3: The Maximum Purchase Price referred to in Article 4 of this Agreement is \$60,000,000 plus the amount, if any, by which the Deposits of the institutional investors named in the Finance Agreement are increased pursuant to Paragraph 1 of the Finance Agreement.

SCHEDULE B

to

Conditional Sale Agreement

<u>Builder</u>	<u>Type</u>	<u>Builder's Specifications</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Estimated Unit Base Price</u>	<u>Estimated Total Base Price</u>	<u>Road Numbers (Inclusive)</u>	<u>Estimated Time and Place of Delivery</u>
General Motors Corporation (Electro-Motive Division)	2,300 h.p. Model GP-39-2 Diesel Electric Locomotives	EMD Specif. 8075 dated July 1977	La Grange, Illinois	10	\$650,000	\$ 6,500,000	3696 through 3705	April 1980; f.o.b. McCook, Illinois
PACCAR Inc	62' Insulated Box Cars AAR Mechanical Designation: XLI	PC-658 dated 8/1/79	Renton, Washington	54	79,630	4,300,020	AT-625378 through AT-625431	March 1980; Renton, Washington
PACCAR Inc	61' Insulated Box Cars AAR Mechanical Designation: XLI	PC-680 dated 3/26/79	Renton, Washington	300	72,000	21,600,000	AT-622800 through AT-623099	April-July 1980; Renton, Washington
Difco Inc.	77-ton, 50-cu. yd. Air Dump Gondola Cars AAR Mechanical Designation: MWD	Difco Drawing 8276-E dated 11/5/76	Findley, Ohio	30	60,000	1,800,000	AT-186230 through AT-186259	June-Aug., 1980; Findley, Ohio
Santa Fe Rail Equipment Co.	60' Plain Box Cars AAR Mechanical Designation: XF	AT&SF Ry. Specif. 2959	Topeka, Kansas	107	64,000	6,848,000	AT-612000 through AT-612106	Aug.-Dec., 1980; Topeka, Kansas
General Electric Company	3,000 h.p. Model C-30-7 Diesel Electric Locomotives	GE Specif. 3390G dated 1/15/79	Erie, Pennsylvania	24	791,667	19,000,000	8099 through 8122	May 1980; f.o.b. Builder's plant, Erie, Pennsylvania

\$60,048,020

CONDITIONAL SALE AGREEMENT

Dated as of March 1, 1980

Between Each of

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

and

PACCAR INC.,

and

DIFCO INC.,

and

SANTA FE RAIL EQUIPMENT CO.

and

GENERAL ELECTRIC COMPANY

and

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

12-1/4% Conditional Sale Indebtedness Due October 1, 1995

CONDITIONAL SALE AGREEMENT

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* This Table of Contents has been included in this document for convenience of reference only and does not form a part of or affect any construction or interpretation of this document.

sold hereunder) named in Item 1 of Schedule A hereto and any successor or successors for the time being to their respective manufacturing properties and businesses.

The rights and obligations of the Builders under this Agreement are several in accordance with their interests and not joint. Accordingly, whenever this Agreement, by the use of such designation as "the Vendor", "such Builder" or other similar term, confers a right or imposes an obligation upon any corporation named in Item 1 of Schedule A hereto or its successor, such right or obligation shall be construed to accrue to or to be enforceable against only the specific corporation furnishing the units of Equipment giving rise to such right or obligation and its successors as herein provided.

The term "Officer's Certificate" as used in this Agreement shall mean a certificate signed by the President, any Vice President, the Controller, the Secretary, the Treasurer or any Assistant Treasurer of the Railroad, and the term "Request" shall mean a written request for the action therein specified, delivered to the Vendor, dated not more than 10 days prior to the date of delivery to the Vendor and signed on behalf of the Railroad by the President, a Vice President, the Treasurer, any Assistant Treasurer, the Secretary, the Controller or any Assistant Secretary of the Railroad.

ARTICLE 2. Construction and Sale. Pursuant to this Agreement, each Builder shall construct or cause to be constructed the units of the Equipment to be constructed by it as described in Schedule B hereto (such units of Equipment with respect to such Builder being hereinafter called "its Equipment") at its plant described in said Schedule B and will sell and deliver to the Railroad, and the Railroad will purchase from such Builder and accept delivery of and pay for such Equipment, each unit of which shall be constructed in accordance with the specifications referred to in Schedule B hereto and in accordance with such modifications thereof as may be agreed upon in writing between such Builder and the Railroad (which specifications and modifications, if any, are called the "Specifications"). The design, quality and component parts of each unit of the Equipment shall conform, on the date of completion of manufacture of each thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards recommended by the

Association of American Railroads reasonably interpreted as being applicable to equipment of the character of such units of the Equipment and each unit of the Equipment will be new railroad equipment first put into service on or after March 1, 1980.

ARTICLE 3. Inspection and Delivery. Each Builder will deliver the units of its Equipment to the Railroad at the place or places specified in Schedule B hereto (or if said Schedule B does not specify a place or places, at the place or places designated from time to time by the Railroad), freight charges, if any, prepaid and for the account of the Railroad, in accordance with the delivery schedule set forth in Schedule B hereto; provided, however, that no Builder shall have any obligation to deliver any unit of Equipment hereunder (i) at any time after the commencement of any proceedings specified in clause (c) or (d) of Article 16 hereof, (ii) if any event of default (as described in said Article 16), or event which with the lapse of time and/or demand would constitute such an event of default, shall have occurred and be continuing, or (iii) following receipt of written notice from the Assignee that there has been since ~~December 31,~~ ^{September 30,} 1979, a material adverse change in the assets, liabilities, ^{HHH} business or condition (financial or otherwise) of the Railroad and subsidiary companies until such time as such written notice may be canceled by a further written notice.

Each Builder's obligation as to time of delivery is subject, however, to delays resulting from causes beyond such Builder's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

Notwithstanding the preceding provisions of this Article 3, any Equipment not delivered, accepted and settled for pursuant to Article 4 hereof on or before December 31, 1980 (the "Cut-Off Date"), shall be excluded herefrom. If any unit or units of Equipment shall be excluded from this Agreement pursuant to the preceding sentence, the Builder or Builders of such unit or units and the Railroad shall execute an agreement supplemental hereto limiting this Agreement to the units of Equipment not so

excluded herefrom. If a Builder's failure to deliver Equipment so excluded from this Agreement resulted from one or more of the causes set forth in the immediately preceding paragraph, the Railroad shall nevertheless be obligated to accept such Equipment and pay the full purchase price therefor, determined as provided in the applicable Interim Document.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Railroad and each Builder shall grant to such authorized inspectors reasonable access to its plant. Each Builder agrees to inspect all materials used in the construction of its Equipment in accordance with the standard quality control practices of such Builder. Upon completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the Railroad for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Railroad shall execute and deliver to such Builder a certificate of acceptance (the "Certificate of Acceptance") stating that such unit or units have been inspected and accepted on behalf of the Railroad and are marked in accordance with Article 7 hereof; provided, however, that such Builder shall not thereby be relieved of its warranty referred to in Article 14 hereof.

On delivery of each such unit hereunder at the place specified for delivery, the Railroad will assume the responsibility and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of such unit.

ARTICLE 4. Purchase Price and Payment. The base price or prices per unit of the Equipment are set forth in Schedule B hereto. Such base price or prices are subject to such increase or decrease as is agreed to by the Builder thereof and the Railroad. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased.

If the aggregate Purchase Price of Equipment under this Agreement shall exceed the Maximum Purchase Price (as defined in Item 3 of Schedule A hereto), the

Builder or Builders (and any assignee of the Builders) and the Railroad, unless waived by the Railroad, will enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for and specified by the Railroad, as will, after giving effect to such exclusion, reduce the aggregate Purchase Price of the Equipment under this Agreement to not more than the Maximum Purchase Price, and the Railroad agrees to purchase any such unit or units so excluded from this Agreement from the Builder thereof for cash on the date such unit or units would otherwise have been settled for under this Agreement either directly or, in case the Railroad shall arrange therefor, by means of a conditional sale, equipment trust or other appropriate method of financing as the Railroad shall determine and shall be reasonably acceptable to such Builder.

For the purpose of making settlement, the Equipment of each Builder shall be divided into such number of groups of units of the Equipment, delivered to and accepted by the Railroad (a "Group"), as such Builder and the Railroad may agree to. The term "Closing Date" with respect to any Group of the Equipment shall mean such date (on or after March 26, 1980, and on or prior to the Cut-Off Date), not more than 30 days following presentation by the Builder of the Equipment in such Group to the Railroad of the invoice and the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Railroad by written notice delivered to the Vendor at least 5 business days prior to the Closing Date designated therein; provided, however, that the aggregate of the Invoiced Purchase Prices (as hereinafter defined) of all Equipment settled for pursuant to this Agreement on any Closing Date shall not exceed (y) the amount then on deposit with the Assignee pursuant to the Finance Agreement under which the Assignee is acting as agent for the institutional investors therein named plus (z) the amount payable by the Railroad pursuant to subparagraph (a) of the next paragraph of this Article 4.

The Railroad hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment,

as follows:

(a) on the Closing Date for each Group the amount, if any, by which (x) the Purchase Price of all units of the Equipment for which settlement has theretofore or is then being made, as stated in the invoice or invoices presented in respect of such Closing Date (said invoiced prices being herein called the "Invoiced Purchase Prices"), exceeds (y) the sum of the Maximum Purchase Price and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to this subparagraph (a); and

(b) in 15 consecutive equal annual installments, as hereinafter provided, an amount equal to the aggregate of the Invoiced Purchase Prices for all the Equipment less the amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph (the aggregate of said installments being hereinafter called the "CSA Indebtedness").

In the event that on any Closing Date the final Purchase Price of any Group has not been finally determined, the invoice presented may be for an estimated Purchase Price (as evidenced by the words "Interim Invoice" written on the face of such invoice), subject to adjustment upon determination of the final Purchase Price, and a supplemental invoice may be presented by the appropriate Builder at least 10 business days prior to any subsequent Closing Date for settlement on such subsequent Closing Date for any increase in the Purchase Price; it being agreed by such Builder that the estimated Purchase Price in any Interim Invoice presented by it shall be calculated in such manner that in no event shall such estimated Purchase Price be in excess of the final Purchase Price of such Group. If a supplemental invoice is presented to the Railroad by the Builder at least 10 business days prior to any subsequent Closing Date with respect to any Group of Equipment, such supplemental invoice shall be settled for at such subsequent Closing Date. If a supplemental invoice is presented to the Railroad by a Builder after, or less than 10 business days prior to, the Closing Date when all units of the Equipment of the Builder shall have been delivered, accepted and settled for, but prior to the Repayment Date (as defined in Paragraph 4 of the Finance Agreement), the Railroad shall designate a Closing Date with respect to

such supplemental invoice. If a supplemental invoice is presented by a Builder after the Repayment Date, it shall be paid in cash by the Railroad to such Builder in accordance with the terms of the original purchase order given by the Railroad and accepted by such Builder in respect of its Equipment.

The installments of the CSA Indebtedness payable pursuant to subparagraph (b) of the preceding paragraph of this Article 4 shall be payable annually on October 1, in each year commencing on October 1, 1981, to and including October 1, 1995, or, if any such date is not a business day, on the next business day. The unpaid portion of the CSA Indebtedness shall bear interest from the respective Closing Dates on which such indebtedness was incurred at the rate of 12-1/4% per annum. All such interest shall be payable, to the extent accrued, on April 1 and October 1 in each year, commencing October 1, 1980, or, if any such date is not a business day, on the next business day.

All interest under this Agreement shall be calculated on the basis of a 360-day year of 12 30-day months.

The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in Chicago, Illinois, or New York, New York, are authorized or obligated to remain closed.

The Railroad will pay, to the extent legally enforceable, interest at the rate of 13-1/4% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

Except as provided in Article 8 hereof, the Railroad shall not have the privilege of prepaying any installment of its indebtedness hereunder prior to the date it becomes due.

In the event the Vendor, pursuant to Article 15

hereof, assigns the right to receive the payments herein provided to be made by the Railroad, the assignee thereof may request the Railroad to make and the Railroad shall make such payments to it at such address as shall be supplied to the Railroad by the assignee.

ARTICLE 5. Taxes. All payments to be made by the Railroad hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, Federal or foreign taxes (other than net income, gross receipts [except gross receipts taxes in the nature of or in lieu of sales or use taxes], excess profits and similar taxes) or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called "impositions"), all of which impositions the Railroad assumes and agrees to pay on demand. The Railroad will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its interest therein and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the security interest of the Vendor or result in a lien upon any part of the Equipment; provided, however, that the Railroad shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the interest or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any such impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Railroad shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; provided, however, that the Railroad shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Railroad shall have approved the payment thereof.

ARTICLE 6. Security Interest in the Equipment.

The Vendor shall and hereby does retain a security interest in the Equipment until the Railroad shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as provided in this Agreement. Any and all additions to the Equipment that are not readily removable without damage to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 8 hereof, when and only when the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, shall have been paid, and all the Railroad's obligations herein contained shall have been performed by the Railroad, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Vendor. However, the Vendor, upon receipt of a Request at that time, will (a) execute a bill or bills of sale for the Equipment transferring and releasing its interest therein to the Railroad, or upon its order, free of all claims, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Railroad, (b) execute and deliver, for filing in all necessary public offices, such instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the release of the security interest of the Vendor in the Equipment and (c) pay to the Railroad any money paid to the Vendor pursuant to Article 8 hereof and not theretofore applied as therein provided. The Railroad hereby waives any and all rights in or to the payment of any penalty or damages for failure to execute and deliver such bill or bills of sale or instruments, except for failure to execute and deliver the same within a reasonable time after receipt of a Request.

ARTICLE 7. Marking of the Equipment.

The Railroad will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in Schedule B hereto, or in the case of Equipment not there

listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the words "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION" or other appropriate markings approved by the Vendor with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's interest in the Equipment and its rights under this Agreement. The Railroad will not place any such unit in operation or exercise any control or dominion over the same until such markings have been made thereon and will replace promptly any such markings which may be removed, defaced, obliterated or destroyed. The Railroad will not change the number of any unit of the Equipment except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor by the Railroad and filed, recorded and deposited by the Railroad in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Railroad will not allow the name of any person, firm, association or corporation to be placed on any of the Equipment as a designation which might be interpreted as a claim of ownership thereof by the Railroad or by any person, firm, association or corporation other than the Vendor; provided, however, that the Railroad may cause the Equipment to be lettered with the names or initials or other insignia of the Railroad or its affiliates.

ARTICLE 8. Casualty Occurrences; Insurance. In the event that any unit of the Equipment shall be worn out, lost, stolen, destroyed, irreparably damaged or otherwise rendered permanently unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise or the Purchase Price (or any portion thereof) of any unit shall have been refunded by a Builder pursuant to such Builder's patent indemnities therefor as set forth in Item 2 of Schedule A hereto (such occurrences being hereinafter called "Casualty Occurrences"), the Railroad shall promptly and fully inform the Vendor in regard thereto (after it has knowledge of such Casualty Occurrence). When the aggregate Casualty Value (as defined

herein) of all units having suffered a Casualty Occurrence (exclusive of units having suffered a Casualty Occurrence with respect to which a payment shall have been made to the Vendor pursuant to this Article 8) hereunder shall exceed \$250,000 (or such lesser amount as the Railroad may elect), the Railroad shall promptly pay to the Vendor a sum equal to the aggregate Casualty Value of such units of the Equipment as of the date of such payment and shall file with the Vendor an Officer's Certificate setting forth the Casualty Value of each unit of the Equipment suffering a Casualty Occurrence.

So long as no event of default shall have occurred and be continuing, any money paid to the Vendor pursuant to the preceding paragraph of this Article 8 shall be used, as the Railroad shall from time to time direct in a Request, in whole or in part, to prepay installments of CSA Indebtedness or toward the cost of a unit or units of new standard-gauge railroad equipment (other than passenger or work equipment) to replace units suffering a Casualty Occurrence; provided, however, that, if the amount (excluding amounts referred to in the immediately following proviso) paid to the Vendor pursuant to the preceding paragraph of this Article 8 and not theretofore applied toward the cost of replacement units exceeds \$4,000,000 at the due date of an annual installment of the CSA Indebtedness, such excess shall be applied on such date to prepay installments of the CSA Indebtedness; provided further, however, that the Railroad shall direct that any money paid to the Vendor in respect of Equipment which shall be worn out be applied only toward the cost of replacement units and not to prepay any installment of the CSA Indebtedness; provided further, however, that no caboose shall be included as a replacement unit if the Purchase Price thereof (together with the Purchase Price of all other cabooses constituting replacement units and included as Equipment hereunder) shall exceed 3% of the outstanding CSA Indebtedness at the date of such Request. In case any money is applied pursuant to this Article 8 to prepay indebtedness, it shall be accompanied by accrued interest on the amount prepaid and shall be so applied to reduce each installment of CSA Indebtedness thereafter falling due pro rata.

The "Casualty Value" of each unit of the Equipment (other than a replacement unit) shall be deemed to be that amount which bears the same ratio to the original Purchase Price thereof (less, in the event the Railroad

shall have made any payments under the provisions of subparagraph (a) of the third paragraph of Article 4 hereof, an amount which bears the same ratio to the aggregate of all such payments as the original Purchase Price of such unit bears to the original aggregate Purchase Price of all the Equipment) as the unpaid CSA Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) as of the date payment is made with respect to such Casualty Occurrence bears to the original CSA Indebtedness. The Casualty Value of each replacement unit shall be deemed to be that amount which bears the same ratio to the portion of the cost thereof paid by the Vendor as the unpaid CSA Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) as of the date payment is made with respect to such Casualty Occurrence bears to the unpaid CSA Indebtedness (without giving effect to any such prepayments) as of the date of acquisition by the Vendor of such replacement unit.

The Railroad will cause any replacement unit or units to be marked as provided in Article 7 hereof. Any and all such replacements units shall constitute accessions to the Equipment and shall be subject to all appropriate terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement; provided, however, that nothing herein shall result in any Builder having any liability or obligation pursuant to this Agreement with respect to any replacement unit or units not manufactured by it. Title to all such replacement units shall be free and clear of all liens and encumbrances except the liens permitted by the second paragraph of Article 12 hereof and shall be taken initially and shall remain in the name of the Vendor subject to the provisions hereof, and the Railroad shall execute, acknowledge, deliver, file, record or deposit all such documents (including the filing of a supplement to this Agreement with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303) and do any and all such acts as may be necessary to cause such replacement units to come under and be subject to this Agreement. All such replacement units shall be guaranteed and warranted in like manner as is customary at the time for similar equipment.

Whenever the Railroad shall deliver a Request to apply amounts toward the cost of any replacement unit or

units, the Railroad shall also deliver therewith bills of sale, invoices and certificates of acceptance, substantially in the form provided by the Assignment, together with an opinion of counsel for the Railroad that the Vendor has a valid and perfected security interest in each such replacement unit, free and clear from all claims, liens, security interests and other encumbrances except the rights of the Railroad under this Agreement, that each such unit has come under and become subject to this Agreement and that an appropriate supplement to this Agreement has been executed and filed with the Interstate Commerce Commission as required by the next preceding paragraph hereof.

In order to facilitate the sale or other disposition of any Equipment suffering a Casualty Occurrence, the Vendor shall, upon Request, after payment by the Railroad of a sum equal to the Casualty Value of such Equipment, execute and deliver to the Railroad or the Railroad's assignee or nominee, a bill of sale (without warranties) for such Equipment, and such other documents as may be required to release such Equipment from the terms and scope of this Agreement, in such form as may be reasonably requested by the Railroad.

So long as no event of default shall have occurred and be continuing, any money paid to the Vendor pursuant to this Article 8 shall, if the Railroad shall direct, be invested, pending its application as hereinabove provided, in such of the following as may be specified by the Railroad: (i) direct obligations of the United States of America or obligations for which the full faith and credit of the United States is pledged to provide for the payment of principal and interest, (ii) open market commercial paper rated A-1 or A-2 by Standard & Poor's Corporation or prime-1 or prime-2 by NCO/Moody's Commercial Paper Division of Moody's Investors Service, Inc., or the successor of either of them, or (iii) certificates of deposit of domestic commercial banks in the United States of America having total capital and surplus in excess of \$100,000,000, in each case maturing in not more than one year from the date of such investment (such investments being herein called "Investments"). Any such Investments shall from time to time be sold and the proceeds reinvested in such Investments as the Railroad may in a Request direct. Any interest received by the Vendor on any Investments shall be held by the Vendor and applied as hereinafter provided. Upon any sale or the maturity of any Invest-

ments, the proceeds thereof, plus any interest received by the Vendor thereon, up to the cost (including accrued interest) thereof, shall be held by the Vendor for application pursuant to this Article 8, and any excess shall be paid to the Railroad. If such proceeds (plus such interest) shall be less than such cost, the Railroad will promptly pay to the Vendor an amount equal to such deficiency. The Railroad will pay all expenses incurred by the Vendor in connection with the purchase and sale of Investments.

If any unit of the Equipment is removed for repairs other than running repairs or becomes unsuitable or not necessary for continued use by the Railroad in its business or operations, such occurrence shall, upon the election of the Railroad evidenced by a Request, constitute a Casualty Occurrence subject to the provisions of this Article 8; provided, however, that the Railroad shall direct any money paid to the Vendor in respect thereof to be applied only toward the cost of replacement units and not to prepay any installment of CSA Indebtedness.

Notwithstanding anything to the contrary contained in this Article 8, if one or more events of default shall have occurred and be continuing, all money held by the Vendor pursuant to this Article 8 (including, for this purpose, Investments) shall be applied by the Vendor as if such money were money received upon the sale of Equipment pursuant to Article 17 hereof.

The Railroad will at all times, at its own expense, cause to be carried and maintained property and casualty insurance in respect of the Equipment, and public liability insurance, in amounts and against risks customarily insured against (taking into account self-insurance) by the Railroad in respect of similar equipment owned by it.

ARTICLE 9. Maintenance; Compliance with Laws and Rules. The Railroad agrees that, at its own cost and expense, it will maintain and keep the Equipment in good operating order, repair and condition, ordinary wear and tear excepted, and eligible (in the case of Equipment other than locomotives) for railroad interchange in accordance with the interchange rules of the Association of American Railroads or other applicable regulatory body.

During the term of this Agreement, the Railroad will at all times comply in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all laws of the jurisdictions in which its operations involving the Equipment may extend, with the Interchange Rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration or replacement of or addition to any part on any unit of the Equipment, the Railroad will conform therewith, at its own expense; provided, however, that the Railroad may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor (if the Vendor shall at any time so advise the Railroad), adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 10. Reports and Inspections. On or before April 1 in each year, commencing with the year 1981, the Railroad shall furnish to the Vendor an Officer's Certificate (a) setting forth as at the preceding December 31 the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding 12 months (or since the date of this Agreement in the case of the first such statement) or that have been withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 7 hereof have been preserved or replaced. The Vendor shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

ARTICLE 11. Possession and Use. The Railroad, so long as an event of default shall not have occurred and be continuing hereunder, shall be entitled, from and after delivery of units of the Equipment by the Builder thereof to the Railroad, to the possession of such units of Equip-

ment and the use thereof upon the lines of railroad owned or operated by it either alone or jointly with others and whether under lease or otherwise, or upon the lines of railroad owned or operated by any railroad company controlled by, or under common control with, the Railroad, or over which it has trackage rights, or upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, and may enter into a written lease of one or more units of the Equipment for a term not exceeding six months with any affiliate or any other solvent railroad company incorporated in the United States of America (or any state thereof or the District of Columbia), but only upon and subject to all the terms and conditions of this Agreement; provided, however, that any such lease permitted hereunder shall state expressly that the rights of the lessee thereunder are subject and subordinate to the rights and remedies of the Vendor under this Agreement; and, provided, further, however, that neither the Railroad nor any such lessee shall be entitled to assign the Equipment for use or service outside of the United States of America except in normal interchange.

Any such lease may provide that the lessee, so long as it shall not be in default under such lease, shall be entitled to the possession of the Equipment included in such lease and the use thereof subject to the rights and remedies of the Vendor in respect of the Equipment covered by such lease upon the occurrence of an event of default hereunder; and, subject to the provisions of Article 7 hereof, may provide for lettering or marking upon such Equipment for convenience of identification of the leasehold interest of such lessee therein. A copy of the form of each lease (and of each amendment thereto, if any) shall promptly be filed with the Vendor.

ARTICLE 12. Prohibition Against Liens. The Railroad will pay or discharge any and all sums claimed by any party from, through or under the Railroad or its successors or assigns which, if unpaid, might become a lien, charge or security interest on or in the Equipment, or any unit thereof, equal or superior to the Vendor's interest therein; provided, however, that the Railroad shall be under no obligation to pay or discharge any such claim so long as it is contesting in good faith and by appropriate legal proceedings such claim and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor in or to the

Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

ARTICLE 13. Railroad's Indemnities. The Railroad will indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of retention by the Vendor of a security interest in the Equipment, the use and operation thereof by the Railroad during the period when said security interest remains in the Vendor or the transfer of said security interest in the Equipment by the Vendor pursuant to any of the provisions of this Agreement.

ARTICLE 14. Patent Indemnities; Builder's Warranty of Material and Workmanship. Each Builder's indemnities with respect to patent infringement, its warranty of material and workmanship and the limitations of its liability with regard thereto and certain agreements of the Railroad are set forth in Item 2 of Schedule A hereto.

ARTICLE 15. Assignments. The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Vendor. A sale, assignment, transfer or disposition to a solvent, Class 1 railroad company organized under the laws of the United States of America or any of the states thereof which shall acquire all or substantially all the lines of railroad of the Railroad, and which, by execution of an appropriate instrument satisfactory to the Vendor, shall assume and agree to perform each of, and all, the obligations and covenants of the Railroad under this Agreement, shall not be deemed a breach of this covenant and thereupon, the successor railroad company shall be for all

purposes the "Railroad" hereunder.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Railroad, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve any Builder from, any of the obligations of such Builder to construct and deliver the Equipment in accordance with this Agreement or to respond to its warranties and indemnities contained or referred to in Article 14 hereof and Schedule A hereto, or relieve the Railroad of any of its obligations to such Builder under Articles 2, 3, 4, 5, 13 and 14 hereof, Schedule A hereto and this Article 15 or of any other obligation which, according to its terms or context, is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to the Railroad, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall by virtue of such assignment acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Railroad of the notification of any such assignment, all payments thereafter to be made by the Railroad under this Agreement to the Vendor shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

The Railroad recognizes that it is the custom of railroad equipment manufacturers to assign conditional sale agreements and understands that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Railroad represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder and for the purpose of inducing such acquisition, that, in the event of such assignment, the rights of such assignee to the entire unpaid indebtedness in respect of the Purchase Price or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense,

setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of any Builder with respect to its Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by a Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against the respective Builders.

The Railroad will (a) in connection with each settlement for the Equipment subsequent to such assignment, deliver to the assignee, at least five business days prior to the Closing Date for the Group fixed in the notice by the Railroad, all documents required by the terms of such assignment to be delivered to such assignee in connection with such settlement, in such number of counterparts or copies as may reasonably be requested, except for any opinion of counsel for such assignee, and (b) furnish to such assignee such number of counterparts of any other certificate or document required by the Vendor as may reasonably be requested.

If this Agreement shall have been assigned by the Builders and the assignee shall not make payment to a Builder with respect to units of the Equipment of such Builder as provided in the instrument making such assignment, such Builder will promptly notify the Railroad of such event and, if such amount shall not have been previously paid by such assignee, the Railroad will, not later than 60 days after the date such payment was due, pay the full purchase price therefor, determined as provided in this Agreement (together with interest from the day such payment was due to the date of payment by the Railroad at the highest prime rate of interest charged by any of the four New York City banks having the largest total assets in effect on the date such payment was due), such payment to be made in cash after the delivery of such Equipment, either directly, or, in case the Railroad shall arrange therefor, by means of a conditional sale agreement, equipment trust or such other appropriate method of financing as the Railroad shall determine and as shall be reasonably acceptable to such Builder.

ARTICLE 16. Defaults. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) the Railroad shall fail to pay in full any indebtedness in respect of the Purchase Price of the Equipment as provided in this Agreement or shall fail to pay in full any other sum payable by the Railroad as provided in this Agreement within five days after the same shall have become due and payable; or

(b) the Railroad shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Equipment on its part to be kept or performed or to make provision satisfactory to the Vendor for such compliance; or

(c) a petition for reorganization under Title 11 of the United States Code, as now constituted or hereafter amended, shall be filed by or against the Railroad and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been and shall not continue to be duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees, within 60 days after such petition shall have been filed and otherwise in accordance with the provisions of 11 U.S.C. § 1168, and successor provision, as the same may be hereafter amended; or

(d) any other proceedings shall be commenced by or against the Railroad for any relief which includes, or might result in, any modification of the obligation of the Railroad hereunder under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffec-

tiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been and shall not continue to be duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Railroad or for its property in connection with any such proceedings in such manner that such obligations have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have been commenced; or

(e) the Railroad shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Railroad and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Vendor, declare (hereinafter called a "Declaration of Default") the entire indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. The Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Railroad wherever situated. The Railroad shall promptly notify the Vendor in writing of any event which has come to its attention which constitutes, or which with the giving of notice and/or lapse of time could constitute, an event of default hereunder and of what action, if any, the Railroad has taken or proposes to take to remedy such event of default or event.

The Vendor may at its election waive any such event of default and its consequences and rescind and annul any Declaration of Default by notice to the Railroad in

writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default had been made. Notwithstanding the provisions of this paragraph, it is agreed by the Railroad that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 17. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may, subject to compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken by its agent or agents immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Railroad or any other person and for such purpose may enter upon the Railroad's premises or any other premises where the Equipment may be located (without judicial process if this can be done without breach of the peace) and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Railroad.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall reasonably designate a point or points upon the premises of the Railroad for the delivery of the Equipment to the Vendor, the Railroad shall, at its own expense, forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any part of the Equipment has been interchanged or leased to return the Equipment so interchanged or leased), cause (a) the Equipment to be moved to such point or points on its lines as shall be designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor and (b) the Equipment to be moved to such interchange point or points of the Railroad as shall be designated by the Vendor upon any sale, lease or other disposal of all or any part of the Equipment by the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines or premises of the Railroad

until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish, without charge for rent, storage or insurance (which the Railroad agrees to maintain as herein provided), the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Railroad, to provide proper maintenance for the Equipment during such storage and to permit inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Railroad requiring specific performance hereof. The Railroad hereby waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 17 provided) may at its election and upon such notice as is hereinafter set forth retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Railroad by telegram or registered mail, addressed as provided in Article 21 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Railroad's rights in the Equipment shall thereupon terminate and all payments made by the Railroad may be retained by the Vendor as compensation for the use of the Equipment by the Railroad; provided, however, that if the Railroad, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor

in retaking possession of, removing and storing the Equipment and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad; provided, further, that if the Railroad or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Railroad and to any other persons to whom the law may require notice of the time and place, may sell the Equipment, or any unit thereof, free from any and all claims of the Railroad or any other party claiming from, through or under the Railroad, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Railroad should tender full payment of the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad. The proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at

such place or places and at such time or times as the Vendor may specify, in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine. The Vendor or the Railroad may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Railroad shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed to the Railroad as provided in Article 21 hereof. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 offerees have been solicited in writing to submit bids), it shall be subject to the right of the Railroad to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Railroad (except to the extent of surplus money received as hereinafter provided in this Article 17), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of the sums due to the Vendor from the Railroad hereunder. From and after the date of any such sale, the Railroad shall pay to the Vendor the per diem interchange for each unit of Equipment which shall not have been assembled, as hereinabove provided, by the date of such sale for each day from the date of such sale to the date of delivery to the purchaser at such sale.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly

granted to the Railroad shall not otherwise alter or affect the Vendor's rights or the Railroad's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Railroad's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Railroad shall pay the amount of such deficiency to the Vendor upon demand, together with interest from the date of such demand to the date of payment by the Railroad at the rate per annum set forth in Article 4 hereof applicable to amounts remaining unpaid after becoming due and payable. If the Railroad shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Railroad.

The Railroad will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including attorneys' fees, if any, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 18. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Railroad to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Railroad, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment or any unit thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 19. Recording. The Railroad will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303; and the Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit, record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its interest in the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement.

The Railroad will promptly furnish to the Vendor evidence of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Railroad with respect thereto satisfactory to the Vendor.

ARTICLE 20. Payment of Expenses. The Railroad will pay all reasonable costs and expenses (other than the fees and expenses of counsel for the Builders) incident to this Agreement and the first assignment of this Agreement (including the fees and expenses of an agent, if the first assignee is an agent), and any instrument supplemental or related hereto or thereto, including all fees and expenses of Messrs. Cravath, Swaine & Moore, special counsel for the first assignee of this Agreement and for any party acquiring interests in such first assignment, and all reasonable costs and expenses in connection with the transfer by any party of interests acquired in such first assignment, but excluding all fees and expenses of any other counsel for such parties.

ARTICLE 21. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at its chief

place of business at the following specified addresses:

(a) to the Railroad, at 80 East Jackson Boulevard, Chicago, Illinois 60604, Attention of Vice President-Finance,

(b) to a Builder, at its address specified in Item 1 of Schedule A hereto, and

(c) to any assignee of the Vendor or of the Railroad, at such address as may have been furnished in writing to each of the other parties hereto by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 22. Article Headings; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including the Schedules hereto, exclusively states the rights of the Vendor and the Railroad with respect to the Equipment and supersedes all other agreements, oral or written (including the Interim Documents), with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Vendor and the Railroad.

ARTICLE 23. Law Governing. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred pursuant to 49 U.S.C. § 11303, and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the marking of the units of Equipment provided for in Article 7 hereof.

ARTICLE 24. Execution. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. It shall not be necessary that any counterpart be signed by all the parties so long as the Railroad and each Builder has executed and delivered a counterpart to the other, whereupon this Agreement shall become effective with respect to the Railroad and such Builder. Each Builder shall be bound hereunder notwithstanding the failure of any other Builder to execute and deliver this Agreement or to perform its obligations hereunder. Although this Agreement is dated, for convenience, as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by their officers or other persons, thereunto duly authorized, and their respective corporate seals to be hereunto affixed, duly attested, all as of the date first above written.

THE ATCHISON, TOPEKA AND
SANTA FE RAILWAY COMPANY,

[Corporate Seal]

by

Vice President

Attest:

Assistant Secretary

GENERAL MOTORS CORPORATION,
(Electro-Motive Division),

[Corporate Seal]

by

Vice President

Attest:

Assistant Secretary

PACCAR INC.,

[Corporate Seal]

by

Vice President

Attest:

Secretary

DIFCO INC.,

[Corporate Seal]

by

Vice President

Attest:

Secretary

SANTA FE RAIL EQUIPMENT CO.,

[Corporate Seal]

by

President

Attest:

Secretary

GENERAL ELECTRIC COMPANY,

[Corporate Seal]

by

R. M. May

Attest:

MANAGER-MARKETING
LOCOMOTIVE MARKETING DEPARTMENT

R. Campbell
Attesting Secretary

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this day of March 1980, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this day of March 1980, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (Electro-Motive Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

STATE OF WASHINGTON,)
) ss.:
COUNTY OF KING,)

On this day of March 1980, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of PACCAR INC, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

STATE OF OHIO,)
) ss.:
COUNTY OF HANCOCK,)

On this day of March 1980, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of DIFCO INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this day of March 1980, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is the President of SANTA FE RAIL EQUIPMENT CO., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

COMMONWEALTH OF PENNSYLVANIA,)
) ss.:
COUNTY OF EIRE,)

On this 25th day of March 1980, before me personally appeared *R. D. Morey*, to me personally known, who, being by me duly sworn, says that he is *Manager-Marketing Locomotive Marketing Department* of GENERAL ELECTRIC COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Judy Crandall

Notary Public

[Notarial Seal]

Judy Crandall, Notary Public
Lawrence Park Twp., Erie County, Penna.
My Commission Expires Jan. 16, 1984

SCHEDULE A

to

Conditional Sale Agreement

- Item 1. (a) General Motors Corporation (Electro-Motive Division), a Delaware corporation, La Grange, Illinois 60525.
- (b) PACCAR Inc, a Delaware corporation, 1400 North 4th Street, Renton, Washington 98055, with a copy to General Counsel, PACCAR Inc, P. O. Box 1518, Bellevue, Washington 98009.
- (c) Difco Inc., an Ohio corporation, Differential Avenue, Findlay, Ohio 45840.
- (d) Santa Fe Rail Equipment Co., a Delaware corporation, 109 West Ninth Street, Topeka, Kansas 66628.
- (e) General Electric Company, a New York corporation, 2901 East Lake Road, Erie, Pennsylvania 16531.
- Item 2. (a) GM Warranty. General Motors Corporation ("GM") warrants that the Equipment manufactured by it hereunder is of the kind and quality described in, and will be built in accordance with, the Specifications referred to in Article 2 of this Agreement and is suitable for the ordinary purposes for which such Equipment is used and warrants each unit of such Equipment to be free from defects in material and workmanship which may develop under normal use and service within two years from date of delivery of such unit or before such unit has been operated 250,000 miles, whichever event shall first occur. GM agrees to correct such defects, which examination shall disclose to GM's satisfaction to be defective, by repair or replacement F.O.B. factory and such correction shall constitute fulfillment of GM's obligation with respect to such defect under this warranty. GM warrants specialties not of its own specification or design to the same extent that

the suppliers of such specialties warrant such items to GM. GM further agrees with the Railroad that neither the inspection as provided in Article 3 of this Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or modification by the Railroad of any of its rights under this Item 2(a).

THERE ARE NO WARRANTIES WITH RESPECT TO MATERIAL AND WORKMANSHIP, EXPRESSED OR IMPLIED, MADE BY GM EXCEPT THE WARRANTIES SET OUT ABOVE.

GM Patent Indemnification. GM shall defend any suit or proceeding brought against the Railroad and/or each assignee of GM's rights under this Agreement so far as the same is based on a claim that the Equipment of GM's specification, or any part thereof, furnished under this Agreement constitutes an infringement of any patent, if notified promptly in writing and given authority, information and assistance (at GM's expense) for the defense of same, and GM shall pay all damages and costs awarded therein against the Railroad or any such assignee.

In case any unit of such Equipment, or any part thereof, is in such suit held to constitute infringement and the use of such unit or part is enjoined, GM shall at its option and at its own expense either procure for the Railroad and any such assignee the right to continue using such unit or part, or replace the same with noninfringing equipment subject to this Agreement, or modify it so it becomes noninfringing, or remove such unit and refund the Purchase Price and the transportation and installations costs thereof. If the Purchase Price is so refunded, such refund shall be made to the assignee of GM's rights under this Agreement if this Agreement has been so assigned. GM will assume no liability for patent infringement by reason of purchase, manufacture, sale or use of devices not included in and covered by its specification. The foregoing states the entire liability of GM for patent infringement by the Equipment or any part thereof.

(b) PACCAR Warranty. PACCAR Inc ("PACCAR") warrants that its Equipment will be built in accordance with the requirements, specifications and standards set forth or referred to in Article 2 of this Agreement and, except in cases of articles and materials specified by the Railroad and not manufactured by PACCAR, warrants its Equipment to be free from defects in material and workmanship under normal use and service, the liability of PACCAR under this warranty being limited, as the Railroad may elect: (i) to repair the defects at PACCAR's plant; or (ii) to replacement of a defective part; or (iii) to the cost of repair or replacement according to the AAR Code of Rules Governing Condition of and Repairs to Freight and Passenger Cars with Interchange of Traffic. PACCAR shall be given reasonable opportunity to verify any claim of defects in workmanship or materials.

The foregoing warranty of PACCAR shall begin at the time of delivery of a unit of its Equipment to the Railroad and terminate two years after such delivery. PACCAR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. The Railroad's rights under the foregoing warranty shall be its sole and exclusive remedy and PACCAR will have no liability for lost profit or for indirect, incidental, consequential or commercial losses. This warranty is expressly in lieu of all other warranties expressed or implied on the part of PACCAR, except for the patent indemnification included in this Item 2(b), and PACCAR neither assumes nor authorizes any person to assume for it any other warranty liability in connection with the construction and delivery of its Equipment, except as aforesaid.

PACCAR further agrees with the Railroad that neither the inspection as provided in Article 3 of this Agreement, nor any examination, nor the acceptance of any units of its Equipment as provided in said Article 3 shall be deemed a waiver or modification by the Railroad of any of its rights under this Item 2(b).

PACCAR Patent Indemnification. Except in cases

of articles or materials specified by the Railroad and not manufactured by PACCAR and in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed by PACCAR, PACCAR agrees to indemnify, protect and hold harmless the Railroad from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Railroad, its assigns or the users of its Equipment because of the use in or about the construction or operation of any of its equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Railroad likewise will indemnify, protect and hold harmless the Vendor from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor because of the use in or about the construction or operation of any of its Equipment of any article or material specified by the Railroad and not manufactured by PACCAR or of any design, system, process, formula or combination specified by the Railroad and not developed or purported to be developed by PACCAR which infringes or is claimed to infringe on any patent or other right. PACCAR agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Railroad every claim, right and cause of action which PACCAR has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Railroad and purchased or otherwise acquired by PACCAR for use in or about the construction or operation of any of its Equipment on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. PACCAR further agrees to execute and deliver to the Railroad or the users of its Equipment all and every such further assurance as may be reasonably requested by the

Railroad more fully to effectuate the assignment and delivery of every such claim, right and cause of action. PACCAR will give notice to the Railroad of any claim known to PACCAR from which liability may be charged against the Railroad hereunder and the Railroad will give notice to PACCAR of any claim known to the Railroad from which liability may be charged against PACCAR hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, the satisfaction and discharge of this Agreement or the termination of this Agreement in any manner.

(c) Difco Warranty. Difco Inc. ("Difco") warrants that its Equipment will be built in accordance with the requirements, specifications and standards set forth or referred to in Article 2 of this Agreement and, except in cases of articles and materials specified by the Railroad and not manufactured by Difco, warrants its Equipment to be free from defects in material and workmanship under normal use and service, the liability of Difco under this warranty being limited, as the Railroad may elect: (i) to repair the defects at Difco's plant; or (ii) to replacement of a defective part; or (iii) to the cost of repair or replacement according to the AAR Code of Rules Governing Condition of and Repairs to Freight and Passenger Cars with Interchange of Traffic. Difco shall be given reasonable opportunity to verify any claim of defects in workmanship or materials.

The foregoing warranty of Difco shall begin at the time of delivery of a unit of its Equipment to the Railroad and terminate two years after such delivery. DIFCO MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. The Railroad's rights under the foregoing warranty shall be its sole and exclusive remedy and Difco will have no liability for lost profit or for indirect, incidental, consequential or commercial losses. This warranty is expressly in lieu of all other warranties expressed or implied on the part of Difco, except for the patent indemnification included in this Item 2(c), and Difco

neither assumes nor authorizes any person to assume for it any other warranty liability in connection with the construction and delivery of its Equipment, except as aforesaid.

Difco further agrees with the Railroad that neither the inspection as provided in Article 3 of this Agreement, nor any examination, nor the acceptance of any units of its Equipment as provided in said Article 3 shall be deemed a waiver or modification by the Railroad of any of its rights under this Item 2(c).

Difco Patent Indemnification. Except in cases of articles or materials specified by the Railroad and not manufactured by Difco and in the case of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed by Difco, Difco agrees to indemnify, protect and hold harmless the Railroad from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Railroad, its assigns or the users of its Equipment because of the use in or about the construction or operation of any of its equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Railroad likewise will indemnify, protect and hold harmless the Vendor from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor because of the use in or about the construction or operation of any of its Equipment of any article or material specified by the Railroad and not manufactured by Difco or of any design, system, process, formula or combination specified by the Railroad and not developed or purported to be developed by Difco which infringes or is claimed to infringe on any patent or other right. Difco agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Railroad every

claim, right and cause of action which Difco has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Railroad and purchased or otherwise acquired by Difco for use in or about the construction or operation of any of its Equipment on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. Difco further agrees to execute and deliver to the Railroad or the users of its Equipment all and every such further assurance as may be reasonably requested by the Railroad more fully to effectuate the assignment and delivery of every such claim, right and cause of action. Difco will give notice to the Railroad of any claim known to Difco from which liability may be charged against the Railroad hereunder and the Railroad will give notice to Difco of any claim known to the Railroad from which liability may be charged against Difco hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, the satisfaction and discharge of this Agreement or the termination of this Agreement in any manner.

The Railroad, for the benefit of any assignee of Difco pursuant to the Assignment (or otherwise), for value received, hereby unconditionally guarantees to such assignee the due and punctual performance of all obligations of Difco under the Assignment (or any such other assignment) and under its warranty and patent indemnification set forth above.

(d) Santa Fe Warranty. Santa Fe Rail Equipment Co. ("Santa Fe Rail") warrants that its Equipment will be built in accordance with the requirements, specifications and standards set forth or referred to in Article 2 of this Agreement and, except in cases of articles and materials specified by the Railroad and not manufactured by Santa Fe Rail, warrants its Equipment to be free from defects in material and workmanship under normal use and

service, the liability of Santa Fe Rail under this warranty being limited, as the Railroad may elect: (i) to repair the defects at Santa Fe Rail's plant; or (ii) to replacement of a defective part; or (iii) to the cost of repair or replacement according to the AAR Code of Rules Governing Condition of and Repairs to Freight and Passenger Cars with Interchange of Traffic. Santa Fe Rail shall be given reasonable opportunity to verify any claim of defects in workmanship or materials.

The foregoing warranty of Santa Fe Rail shall begin at the time of delivery of a unit of its Equipment to the Railroad and terminate two years after such delivery. SANTA FE RAIL MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. The Railroad's rights under the foregoing warranty shall be its sole and exclusive remedy and Santa Fe Rail will have no liability for lost profit or for indirect, incidental, consequential or commercial losses. This warranty is expressly in lieu of all other warranties expressed or implied on the part of Santa Fe Rail, except for the patent indemnification included in this Item 2(d), and Santa Fe Rail neither assumes nor authorizes any person to assume for it any other warranty liability in connection with the construction and delivery of its Equipment, except as aforesaid.

Santa Fe Rail further agrees with the Railroad that neither the inspection as provided in Article 3 of this Agreement, nor any examination, nor the acceptance of any units of its Equipment as provided in said Article 3 shall be deemed a waiver or modification by the Railroad of any of its rights under this Item 2(d).

Santa Fe Rail Patent Indemnification. Except in cases of articles or materials specified by the Railroad and not manufactured by Santa Fe Rail and in the cases of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed by Santa Fe Rail, Santa Fe Rail agrees to indemnify, protect and hold harmless the Railroad from and against any and all liability, claims, costs,

charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Railroad, its assigns or the users of its Equipment because of the use in or about the construction or operation of any of its equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Railroad likewise will indemnify, protect and hold harmless the Vendor from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor because of the use in or about the construction or operation of any of its Equipment of any article or material specified by the Railroad and not manufactured by Santa Fe Rail or of any design, system, process, formula or combination specified by the Railroad and not developed or purported to be developed by Santa Fe Rail which infringes or is claimed to infringe on any patent or other right. Santa Fe Rail agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Railroad every claim, right and cause of action which Santa Fe Rail has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Railroad and purchased or otherwise acquired by Santa Fe Rail for use in or about the construction or operation of any of its Equipment on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. Santa Fe Rail further agrees to execute and deliver to the Railroad or the users of its Equipment all and every such further assurance as may be reasonably requested by the Railroad more fully to effectuate the assignment and delivery of every such claim, right and cause of action. Santa Fe Rail will give notice to the Railroad of any claim known to Santa Fe Rail from which liability may be charged against the Railroad hereunder and the Railroad will give notice to

Santa Fe Rail of any claim known to the Railroad from which liability may be charged against Santa Fe Rail hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, the satisfaction and discharge of this Agreement or the termination of this Agreement in any manner.

The Railroad, for the benefit of any assignee of Santa Fe Rail pursuant to the Assignment (or otherwise), for value received, hereby unconditionally guarantees to such assignee the due and punctual performance of all obligations of Santa Fe Rail under the Assignment (or any such other assignment) and under its warranty and patent indemnification set forth above.

(e) GE Warranty. GE warrants to the Railroad that each unit of Equipment manufactured by it hereunder will be free from defects in material, workmanship and title under normal use and service, and will be of the kind and quality designated or described in the Specifications referred to in Article 2 of this Agreement. The foregoing warranty is exclusive and in lieu of all other warranties, whether written, oral, implied or statutory (except as to title). NO WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR PURPOSE SHALL APPLY. If it appears within two years from the date of shipment by GE, or within 250,000 miles of operation, whichever event shall first occur, that any unit of the Equipment does not meet the warranties specified above, and the Railroad or its agent notifies GE promptly, GE, after verification as to condition and usage, shall correct any defect including nonconformance with the Specifications, at its option, either by repairing any defective part or parts made available to GE, or by making available at GE's plant or warehouse a repaired or replacement part. If requested by GE, the Railroad will ship the defective part or parts, with shipping charges prepaid, to the plant or warehouse designated by GE.

The liability of GE to the Railroad (except as to

title) arising out of the supplying of any unit of Equipment hereunder, or its use, whether on warranty, contract or negligence, shall not in any case exceed the cost of correcting defects in the Equipment as herein provided, and upon the expiration of the warranty period specified above, all such liability shall terminate. GE shall have no liability for any unit of Equipment or part thereof which becomes defective by reason of improper storage or application, misuse, negligence, accident or improper operation, maintenance, repairs or alterations on the part of the Railroad, or any third party other than GE. The foregoing shall constitute the sole remedy of the Railroad and the sole liability of GE.

It is understood that GE has the right to make any changes in design and add improvements to equipment at any time without incurring any obligations to install, at GE's expense, the same on other equipment sold by GE.

THERE ARE NO WARRANTIES WITH RESPECT TO MATERIAL AND WORKMANSHIP, EXPRESS OR IMPLIED, MADE BY GE EXCEPT THE WARRANTIES SET OUT ABOVE.

GE further agrees with the Railroad that neither the inspection as provided in Article 3 of this Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Railroad of any of its rights under this Item 2. In no event, whether as a result of breach of contract, warranty, tort (including negligence) or otherwise, shall GE or its suppliers be liable for any special, consequential, incidental or penal damages including, but not limited to, loss of profit or revenues, loss of use of the products or any associated equipment, damage to associated equipment, cost of capital, cost of substitute products, facilities, services or replacement power, downtime costs, or claims of the Railroad's customers for such damages. If the Railroad transfers title to or leases the products hereunder to any third party (other than as permitted by this Agreement), the Railroad shall obtain from such third party a provision affording

GE and its suppliers the protection of the preceding sentence.

In no event, whether as a result of breach of contract, warranty, tort (including negligence) or otherwise, shall GE's liability to the Railroad for any loss or damage arising out of, or resulting from this agreement, or from its performance or breach, or from the productions or services furnished hereunder, exceed the price of the specific product or service which gives rise to the claim. Except as to title any such liability shall terminate upon the expiration of the warranty period specified below. If GE furnishes the Railroad with advice or other assistance which concerns any product supplied hereunder or any system or equipment in which any such product may be installed and which is not required pursuant to this agreement, the furnishing of such advice or assistance will not subject GE to any liability, whether in contract, warranty, tort (including negligence) or otherwise.

The invalidity, in whole or in part, of any of the foregoing paragraphs will not affect the remainder of such paragraph or any other paragraph in this paragraph (e).

GE Patent Indemnification. Except in cases of designs specified by the Railroad and not developed or purported to be developed by GE, and articles and materials specified by the Railroad and not manufactured by GE, GE warrants that the Equipment furnished hereunder, and any part thereof, shall be delivered free of any rightful claim of any third party for infringement of any United States patent. If notified promptly in writing and given authority, information and assistance, GE shall defend, or may settle, at its expense, any suit or proceeding against the Railroad so far as based on a claimed infringement which would result in a breach of this warranty and GE shall pay all damages and costs awarded therein against the Railroad due to such breach. In case any equipment or part thereof is in such suit or proceeding found to constitute such an infringement and the use of such Equipment or

part thereof is enjoined, GE shall, at its expense and option, either procure for the Railroad the right to continue using said equipment or part thereof, or replace same within six months of such injunction with noninfringing Equipment or part thereof acceptable to the Railroad, or modify same so it becomes noninfringing, or remove the Equipment or part thereof and refund the Purchase Price (less reasonable depreciation for any period of use) and any transportation costs separately paid by the Railroad, but in each case without impairing the operational capability of such Equipment. (If the Purchase Price is so refunded, such refund shall be made to the assignee of GE's rights under this Agreement if this Agreement has been so assigned.) The preceding shall not apply to the use of any Equipment or part thereof furnished hereunder in conjunction with any other product in a combination not furnished by GE as a part of this transaction. As to any such combination, GE assumes no liability whatsoever for patent infringement and the Railroad will hold GE harmless against any infringement claims arising therefrom. GE will give notice to the Railroad of any claim known to GE from which liability may be charged against the Railroad hereunder and the Railroad will give notice to GE of any claim known to them from which liability may be charged against GE hereunder.

The foregoing states the entire liability of GE for patent infringement by the Equipment or any part thereof.

Item 3: The Maximum Purchase Price referred to in Article 4 of this Agreement is \$60,000,000 plus the amount, if any, by which the Deposits of the institutional investors named in the Finance Agreement are increased pursuant to Paragraph 1 of the Finance Agreement.